LESSONS FROM THE MUELLER REPORT: PRESIDENTIAL OBSTRUCTION AND OTHER CRIMES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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LESSONS FROM THE MUELLER REPORT: PRESIDENTIAL OBSTRUCTION AND OTHER CRIMES

MONDAY, JUNE 10, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to call, at 2:10 p.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Mucarsel-Powell, Escobar, Collins, Sensenbrenner, Chabot, Gohmert, Jordan, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs, McClintock, Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Aaron Hiller, Deputy Chief Counsel; Arya Hariharan, Oversight Counsel; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Lisette Morton, Director of Policy, Planning, and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Susan Jensen, Parliamentarian/Senior Counsel; Will Emmons, Professional Staff Member; Sarah Istel, Oversight Counsel; Matt Morgan, Counsel; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Carlton Davis, Minority Chief Oversight Counsel; Ashley Callen, Minority Oversight Counsel; Danny Johnson, Minority Oversight Counsel; Jake Greenberg, Minority Oversight Counsel; and Erica Barker, Minority Chief Legislative Clerk.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to today's hearing on "Lessons from the Mueller Report: Presidential Obstruction and Other Crimes."

I will now recognize myself for an opening statement.

Just over 2 years ago, Special Counsel Robert Mueller was charged with conducting a full and thorough investigation of the Russian Government's efforts to interfere in the 2016 Presidential election, unquote, including an examination of, quote, any links

and/or coordination between the Russian Government and individuals associated with the campaign of President Donald Trump and any matters that arose or may arise directly from the investigation, close quote.

He concluded, in his own words, quote, Russian intelligence officers who were part of the Russian military launched a concerted attack on our political system. Those officers used sophisticated cyber techniques to hack into computers and networks used by the Clinton campaign. They stole private information and then released that information through fake online identities and through the organization WikiLeaks.

We now know that the Russian Government timed their operation to interfere with our election to harm the candidacy of Secretary Clinton and to benefit the Trump campaign. Separately, the special counsel concluded that Russian entities, quote, engaged in a social media operation where Russian citizens posed as Americans in order to interfere in the election, close quote.

Using fake identities on social media platforms like Facebook and Twitter, these operatives planned rallies in favor of the President and spread lies about Secretary Clinton made to look like legitimate media. Again, these activities represent a direct attack on our democratic process.

With respect to these two specific operations by the Russian Government, the special counsel did not find sufficient evidence to charge Trump campaign officials with conspiracy against the United States.

He did, however, document at least 171 contacts between members of the Trump campaign and transition team and the Russian Government. Sixteen Trump campaign officials are known to have direct communications with Russian agents. Representatives of the Trump campaign exchanged emails and phone calls and held face-to-face meetings with high-level Russian Government officials, Russian oligarchs, and even some of the hackers the special counsel accused of working to sway the election.

There can be no question that Congress must investigate this direct attack on our democratic process. I believe that Ranking Member Collins agrees that we must do so without delay. In a letter he sent last month, he urged the committee to call Robert Mueller to testify, during the Memorial Day recess, if necessary, both for the sake of transparency and, quote, for the American public to learn the full contours of the special counsel's investigation, close quote.

In a letter he sent last week, the ranking member again asked us to examine, quote, the threat Russia and other nefarious actors have played and may continue to play in our elections, close quote.

Over the course of the coming weeks, this committee will do just that. We will examine the effects of foreign influence on our elections. I hope that we will hear testimony from the special counsel as well.

But the country cannot hope to understand the Russian Government's attack on our democratic system if we do not also investigate who stood to benefit from that attack and the extent to which the Trump campaign may have welcomed it.

Similarly, we cannot fully understand the special counsel's work without also discussing President Trump's repeated attempts to

undermine it. In his report, the special counsel describes 10 separate incidents in which the President attempted to change the scope or direction of the investigation or to end it altogether.

At one point, President Trump ordered White House Counsel Don McGahn to fire the special counsel. Later, he asked McGahn to write a letter stating that the incident never happened. McGahn said he would rather resign.

At different stages, he asked Attorney General Jeff Sessions to unrecuse, in quotes, himself and to step in to direct the investigation away from the President's conduct.

And, of course, the President's public statements about this investigation before and after the results of the Mueller report are, at best, at odds with the evidence laid out in the report itself. There can be no question that this committee must investigate this behavior as well.

Today's hearing is the first in a series of hearings designed to unpack the work of the special counsel and related matters. We have a responsibility to do this work, to follow the facts where they lead, to make recommendations to the whole House as circumstances warrant, and to craft legislation to make certain no President, Democrat or Republican, can ever act in this way again.

Our witnesses today include three former Federal prosecutors, each of whom has considerable experience weighing the kind of evidence laid out by the special counsel in his report and in his indictments of 34 individuals, including President Trump's National Security Advisor, his campaign manager, his deputy campaign manager, and his personal attorney.

Our panel also includes Mr. John Dean, who served as White House counsel to President Nixon and who became a critical witness for prosecutors and congressional investigators attempting to respond to President Nixon's attempt to obstruct the Department of Justice and the FBI.

We will rely on the expertise of these witnesses to help draw our own conclusions about the findings of the special counsel and other evidence before us today. We will do so mindful of the House rules that prevent us from making inappropriate personal references to the President, to members of this committee, and to other Members of Congress.

But the rules of decorum in the House of Representatives are a shield, not a sword. The rules are designed to focus the debate on the facts and the law and can, therefore, help us discuss the findings of the special counsel with the seriousness they deserve. The rules are not, however, an opportunity to avoid discussing serious allegations of misconduct altogether.

I know that the ranking member and I disagree on any number of topics, including on what conclusions we should draw from the facts laid out by the special counsel. For example, in his last letter, he argued that President Trump has been, quote, vindicated, unquote, by the special counsel's report. I cannot agree with that conclusion. Neither, I believe, could the special counsel, given his insistence that his report, quote, does not exonerate the President, close quote.

But I also know that the ranking member and I agree on the seriousness of the attack on our elections and that we must work to-

gether to make it more difficult for any President to ignore the danger that presented itself in 2016.

That work continues in this hearing room today, and it continues at the Department of Justice later this afternoon, where this committee will begin to review some of the documents that Attorney General Barr previously denied us.

I am pleased that we have reached an agreement to review at least some of the evidence underlying the Mueller report, including interview notes, firsthand accounts of misconduct, and other critical evidence, and that this material will be made available without delay to members of the committee on both sides of the aisle.

As a result, I see no need to resort to the criminal contempt statute to enforce our April 19 subpoena, at least for now, so long as the Department upholds its end of the bargain.

But our arrangement with the Department does not extend to the full scope of our request for the full Mueller report and its underlying materials, including grand jury information, nor does it extend to our demand that Don McGahn, a key fact witness, testify before this committee. Our work will, therefore, continue tomorrow on the House floor when we consider Chairman McGovern's resolution to authorize this committee to enforce its subpoena through civil litigation.

It is my expectation that, as a result of this authorization, Mr. McGahn will testify here before long, and between now and then, we still have an obligation to investigate the deeply troubling evidence outlined by the special counsel—not merely the portions that implicate Russian nationals, as some have suggested, but the entire report, including the volume that lays out some of the President's troubling behavior.

The committee's work is serious. We should delay it no further. We should conduct ourselves in a manner that is consistent with the rules of the House and worthy of this chamber.

And even if we cannot agree to draw the same conclusions from the evidence, we should at least proceed with a common understanding: We were attacked. We were attacked by a foreign adversary. President Trump's campaign took full advantage of the attack when it came. The descriptions of obstruction of justice in Volume II go to the heart of our legal system.

If we can agree on this common set of our facts as our starting place and agree to follow the facts and the law where they take us, I believe we can make a great deal of progress in this hearing today.

I thank the panel for being here today, and I look forward to your testimony.

Before we proceed further, I want to note for the record that the gentlelady from Pennsylvania, Ms. Dean, is unable to be with us today due to a death in the family. She very much wanted to participate in today's hearing, and I did not want anyone to misinterpret her absence.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman.

And I appreciate, especially, the last. And I would extend my prayers and thoughts to Ms. Dean as well. I'm just a little over—a little under a year, in fact—Monday, this week, will be 1 year from losing my mother. So for all of us, we go through that, and it's an expression of love.

However, I will come to this hearing today and say that we are continuing—I appreciate the chairman's understanding. I appreciate the chairman outlining a great deal of the basic conclusion that was an affirmative conclusion from the Mueller investigation that was the foreign interference and the Russian part of this.

What is amazing, though—and I agree with the chairman's assessment of being attacked, and it's something we've known the Russians were always a part. For some of us, we've been talking about the Russians for a long time in that. But it's about priorities.

And here's my question about priorities in coming to this hearing, and the question of priorities is: If we were attacked, as the chairman just said, then the priority should be to go to the battlefield on the attack where we were attacked on and not run by the sideshow to hear from the commentators.

We should actually go to the one that the—Mr. Mueller actually said was, we have a problem here. We're showing you, actually using documents here, how can we firm up our elections, how can we do away with foreign interference, how can we do that. It's about priorities.

And I think what has happened here is the chairman is showing the priorities. The priorities were, from November 2016, it appears that we have an issue with who got elected President. And we thought the Mueller investigation would solve this for us, and it really did not, even after a lot of discussion. We're going to hear a lot about that today in the discussion that we have.

But it goes back to priorities and priorities of bringing what we focus on and how we focus on it.

And if you look at the witnesses today and you discuss what was actually just went on for a while, we're not bringing Russia front and center, we're not bringing the threats to our election front and center—although I appreciate the chairman reading the letters that I send him and understanding what we could actually be working on. And I'm wanting to move forward there.

But, however, here we come with some folks that are great folks—you're wonderful on TV. I could catch your testimony on TV. In fact, by the way, I could this morning.

I'm a Republican. I believe that you use everything that you've got, do as much business as you want and generate as much as you want to work for yourself. But I don't believe it is the priority of this committee to have to come and hear from those who are not a part of the Mueller investigation, who are not a part of this, pontificating on things that you can do on TV, like all of us get a chance to do occasionally, but not here on a hearing.

But then we get—and I'm sort of reminded of the Russia priority issue, because just a few years ago it was brought up, and one of our candidates talked about Russia being a threat, and the former President, Mr. Obama, said, you know, that the 1980s are asking for their foreign policy back. Well, guess what. This committee is

now hearing from the 1970s, and they want their star witness back.

In fact, it's very difficult for one of the witnesses here today, for many of us who can actually trace the distrust in government back to the witness here today—the 1970s star of obstruction.

In fact, I'll take it a little bit further. For those of us who've been looking into this for a while and wonder how we got started here and for those of us who've heard me discuss the fact that many on our committee on our side discuss the fact of the corrupt cabal, what we see, of Strzok, Page, McCabe, Comey, and others, how we actually got started here, I believe that they have the godfather here today, Mr. Dean.

In fact, they probably had a picture of, how do we actually use the governmental resources to interfere in other people's campaigns? Mr. Dean is the godfather. They may have even had a picture of you, knowing how you do it. And that is here today, again, to talk about a President that, obviously, you don't like and interview in ways that you had pled guilty to.

I appreciate your right to be here, and I appreciate your right to share it anywhere else, but don't appreciate the fact that here we are again with priorities in this committee turned upside down.

It is interesting to me—and I applaud the chairman for finally getting accommodation process from the Department of Justice that he could've had a long time ago. I'm glad we got it there. Now maybe we can move forward. Maybe we can being to put this committee in order.

But I would just go back and just say that I would ask my chairman, on who we do agree on some things—hopefully, tomorrow, we're actually going to have a bill we agree on, the 9/11 bill.

But while we continue this part, asking opinions from commentators promoting their agendas, my question is this: At the end of the day, for these not here, they're here commenting on a report, I go back to what the chairman asked, and he said, well, we may get there. And I said, it was, we hope—I think were the exact words just a moment ago—hope to have Robert Mueller. Hope.

This committee is obsessed with a document in which they could talk to the author, and we seem to not want to go there. We are hot and heavy to get everybody else here, but we don't want to go there. Because, at the end of the day, the Mueller document, in spite of his standing up in statements, stated there was no collusion, which is where it started. Where it started, there was that contact, and there was no charged obstruction.

But here we are again today. Here we are, looking at it as we go forward. Why? Because there is an obsession. There's another election around the corner, and that other election is simply being played out here. How can we damage the President? Because we don't like the cards that we've got to run for reelection on, with the economy and other things happening.

So, Mr. Chairman, we're here again. I believe the priorities are wrong, but you've called the priorities. So, now, let the show begin.

I yield back.

Chairman NADLER. Thank you, Mr. Collins.

I will now introduce today's witnesses.

John Dean was the White House counsel under President Richard Nixon. He is most well-known for his role as a principal witness during the Senate Watergate hearings, where his testimony was later fully corroborated as to its truthfulness by the revelations in President Nixon's White House tapes.

Prior to his time in the White House, Mr. Dean served as the Republican chief counsel of this committee as well as the associate director of the National Commission on Reform of Federal Criminal Laws. He has a B.A. from the College of Wooster, and he received his J.D. from the Georgetown University Law Center.

Joyce White Vance served as the U.S. attorney for the Northern District of Alabama from 2009 to 2017. She also served on the Attorney General's Advisory Committee and was the co-chair of its Criminal Practice Subcommittee. She is currently a distinguished professor of the practice of law at the University of Alabama School of Law. Ms. Vance received her bachelor's degree from Bates College and a J.D. from the University of Virginia Law School.

John Malcolm is the vice president for the Institute for Constitutional Government and director of the Meese Center for Legal and Judicial Studies at The Heritage Foundation. He also serves as chairman of the Federalist Society's Criminal Law Practice Group. From 2001 to 2004, Mr. Malcolm served as a deputy attorney general in the Department of Justice. He received his bachelor's degree from Columbia College, my alma mater, and a J.D. from Harvard Law School.

Barbara McQuade served as the U.S. attorney for the Eastern District of Michigan from 2010 to 2017. She also served as vice chair of the Attorney General's Advisory Committee and co-chaired its Terrorism and National Security Subcommittee. She is currently a professor from practice at the University of Michigan Law School. Mr. McQuade received her bachelor's degree from the University of Michigan and her J.D. at the University of Michigan Law School.

We welcome our distinguished witnesses, and we thank you for participating in today's hearing.

Now, if you would please rise, I will begin by swearing you in.

Raise your right hands.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record show that the witnesses answered in the affirmative.

Thank you, and please be seated.

Please note that your written statements will be entered into the record in their entirety. Accordingly, I ask that you summarize your testimony in 5 minutes.

To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired.

I will be a little loose in interpreting that 5 minutes for the witnesses, not necessarily for the members.

Mr. Dean, you may begin.

TESTIMONY OF JOHN DEAN, FORMER WHITE HOUSE COUNSEL; JOYCE WHITE VANCE, FORMER U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF ALABAMA; JOHN MALCOLM, VICE PRESIDENT, INSTITUTE FOR CONSTITUTIONAL GOVERNMENT, DIRECTOR OF THE MEESE CENTER FOR LEGAL AND JUDICIAL STUDIES AND SENIOR LEGAL FELLOW, THE HERITAGE FOUNDATION; AND BARBARA MCQUADE, FORMER U.S. ATTORNEY FOR THE EASTERN DISTRICT OF MICHIGAN

TESTIMONY OF JOHN DEAN

Mr. DEAN. Chairman Nadler, Ranking Member Collins, the last time I appeared before your committee was July 11, 1974, during the impeachment inquiry of Richard Nixon. Clearly, I'm not here today as a fact witness. I accepted the invitation to come here today because I hope I can give a little historical perspective on the Mueller report.

In many ways, the Mueller report is to President Trump what the so-called Watergate roadmap, officially titled "The Grand Jury Report and Recommendation Concerning Transmission of Evidence to the House of Representatives," was to President Richard Nixon. Stated a little differently, Special Counsel Mueller has provided this committee with a roadmap.

Drawing from my testimony, I'd like to offer a few—actually, just one I'm going to focus on—parallels I find with the Mueller report. I have laid out in my prepared statement six examples. Those examples are illustrative rather than exhaustive. But let me turn to the sixth. And anybody who has any question about the prior five, I'm happy to address.

The sixth is the Mueller report's effort regarding the influence of witnesses with pardons. As the citation shows, it's spread out throughout the report.

Mr. Mueller addresses the question of whether President Trump dangled pardons or offered favorable treatment to Michael Cohen, Paul Manafort, Michael Cohen, and Roger Stone, whose name is actually redacted but, based on educated conjecture, I think that's pretty clear who it is. And the question is whether, in return for their pardons, they agreed to—or the suggestion of a pardon—he was seeking them to keep their silence and how they coordinated with investigators.

But, also, the Mueller report offers a very powerful legal analysis, that notwithstanding the fact that the pardon power is one of the most unrestricted Presidential powers, it cannot be used for improper purposes. And I give the cite of that argument.

What's interesting is Richard Nixon, who used the pardon in a similar way, recognized that it was improper. For example, in December of 1972, Chuck Colson went in to see the President to get a pardon—a commitment for Howard Hunt, who he had been responsible in bringing into the White House and whose wife had recently died in a crash and felt he couldn't withstand a trial and didn't want to spend the rest of his life in jail, so he was seeking a pardon assurance from Chuck Colson.

The President reluctantly agreed to do that. And when Hunt was given the word, the so-called Cuban Americans who were part of

the Watergate operation, they also took their cue from Hunt and pled.

In my March 21st conversation with Nixon, we got into the subject of pardons, and he, at that point, said he very clearly understood, to grant pardons, it would be wrong. I cite the actual exchange from that conversation.

One that I did not cite in here is, I learned in a later tape that Ehrlichman had been asked by the President to offer me a pardon, to protect me and hopefully encourage me from not breaking rank. Ehrlichman knew that was wrong, so he didn't offer that pardon.

In one of my last conversations with Richard Nixon, he told me in a very peculiar manner, getting up from his desk in the EOB office and going across the office and in a stage whisper saying to me, "John, I made a mistake in talking to Colson about clemency for Hunt, didn't I?" And I said, "Yes, Mr. President. That was probably obstruction of justice."

When Haldeman and Ehrlichman were departing, they pled with the White House that they be given pardons. I think because Nixon knew he could only compound his situation at that point, that he refused to even entertain the request.

Mr. DEAN. Finally, let me close on the note—and I explain this at some length—that I certainly hope Don McGahn is a key witness before this committee. Because of my testimony, the model code of the ABA today makes very clear in the Rule 1.13 that Mr. McGahn represents not Donald Trump but the Office of the President. His client is the Office of the President. And I think he owes that office his testimony before this committee.

Thank you.

[The statement of Mr. Dean follows:]

STATEMENT OF JOHN W. DEAN
U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY HEARINGS:
"LESSONS FROM THE MUELLER REPORT: PRESIDENTIAL OBSTRUCTION AND OTHER CRIMES."

JUNE 10, 2019

Chairman Nadler, Ranking Member Collins, the last time I appeared before your committee was July 11, 1974, during the impeachment inquiry of President Richard Nixon. Clearly, I am not here as a fact witness. Rather I accepted the invitation to appear today because I hope I can give a bit of historical context to the Mueller Report.

In many ways the Mueller Report is to President Trump what the so-called Watergate "Road Map" (officially titled "Grand Jury Report and Recommendation Concerning Transmission of Evidence to the House of Representatives") was to President Richard Nixon. Stated a bit differently, Special Counsel Mueller has provided this committee a road map.

The Mueller Report, like the Watergate Road Map, conveys findings, with supporting evidence, of potential criminal activity based on the work of federal prosecutors, FBI investigators, and witness testimony before a federal grand jury. The Mueller Report explains – in Vol. II, p. 1 – that one of the reasons the Special Counsel did not make charging decisions relating to obstruction of justice was because he did not want to "potentially preempt [the] constitutional processes for addressing presidential misconduct." The report then cites at footnote 2: "See U.S. CONST. ART. I § 2, cl. 5; § 3, cl. 6; cf. OLC Op. at 257-258 (discussing relationship between impeachment and criminal prosecution of a sitting President)."

Today, you are focusing on Volume II of the report. Neither of the two volumes are formally titled, but the first sentence of the second paragraph, on page 1 of Volume II states it's focus: "Beginning in 2017, the President of the United States took a variety of actions towards the ongoing FBI investigation into Russia's interference in the 2016 presidential election and related matters that raised questions about whether he had obstructed justice." Volume II concludes on page 182: "[I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state." However, the Special Counsel's office was unable to reach that conclusion, so the report neither alleges criminal behavior by the president nor, as the report states, does it "exonerate him." (SEE MUELLER REPORT, VOL. II, PP. 1 AND 182.)

I would like to address a few of the remarkable parallels I find in the Mueller Report that echo Watergate, particularly those related to obstruction of justice. And I hasten to add that I learned about obstruction of justice the hard way, by finding myself on the wrong side of the law.

The examples that follow are illustrative rather than exhaustive, and before turning to obstruction of justice, I must make brief mention of the underlying events to place the material in context:

UNDERLYING EVENTS

MUELLER REPORT VOLUME I: The underlying crimes were a Russian "active measures" social media campaign and hacking/dumping operations, which Mueller describes as a "sweeping and systematic" effort to influence our 2016 presidential election. The targets of the hacking were the Democratic National Committee and the Clinton campaign, from which information was stolen and released to harm the Clinton campaign and in turn would help the Trump campaign.

WATERGATE: In 1972, the underlying crime was a bungled break-in, illicit photographing of private documents and an attempt to bug the telephones and offices of the chairman of the Democratic National Committee, with plans to do likewise that same night with Nixon's most likely Democratic opponent Senator George McGovern, which because of the arrests of five men at the Watergate, did not happen.

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MUELLER REPORT VOLUME I: The Mueller Reports finds no illegal conspiracy, or criminal aiding and abetting, by candidate Trump with the Russians.

WATERGATE: I am aware of no evidence that Nixon was involved with or had advance knowledge of the Watergate break-in and bugging, or the similar plans for Senator McGovern.

Yet events in both 1972 and 2016 resulted in obstruction of the investigations. (See *U.S. VS. HALDEMAN*, 559 F.2D 31 (D.C. CIR. 1976); AND "IMPEACHMENT OF RICHARD NIXON, PRESIDENT OF THE UNITED STATES," *REPORT OF THE COMMITTEE ON THE JUDICIARY* (WASHINGTON, D.C: GOV. PRINTING OFFICE, 1974); AND SPECIAL COUNSEL ROBERT S. MUELLER, III, "REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION," *VOLUMES I AND II* (WASHINGTON, D.C: GOV. PRINTING OFFICE, 2019).

OBSTRUCTION OF JUSTICE

In both situations the White House Counsel was implicated in the coverup activity. While I was an active participant in the coverup for a period of time, there is absolutely no information whatsoever that Trump's White House Counsel, Don McGahn, participated in any illegal or improper activity – to the contrary, there is evidence he prevented several obstruction attempts. But there is no question Mr. McGahn was a critical observer of these activities. Mr. McGahn is the most prominent fact witness regarding obstruction of justice cited in the Mueller Report. He is mentioned in the report on 529 occasions, and based on the footnotes he was interviewed at various lengths by the FBI on not less than 9 occasions: July 24, 2015, December 11, 2015 and April 1, 2016 (thus three occasions before Mr. Trump was elected), and July 7, 2017, January 19, 2018, February 16, 2018, March 2, 2018, October 22, 2018, and March 20, 2019 (and on six occasions after Mr. Trump was elected). This is based on my count of FBI 302 reports cited in the Mueller Report.

The Mueller Report also refers to corroboration of McGahn as a witness in that he made contemporaneous notes on occasions (e.g., MUELLER RPT, VOL. II, P.117); McGahn discussed
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matters with others (e.g. Eisenberg, MUELLER RPT, VOL. II, P. 32); his chief of staff Annie Donaldson made contemporaneous notes of McGahn's conversations with the president (e.g., MUELLER RPT, VOL. II, P. 52), and McGahn is the only witness that the Special Counsel expressly labels as reliable, calling McGahn "a credible witness with no motive to lie or exaggerate given the position he held in the White House." (MUELLER RPT, VOL. II, P. 88.)

A few specific examples of the Mueller findings and the Watergate parallels **(HEADER CITES ARE TO VOLUME II):**

MUELLER REPORT RE MICHAEL FLYNN (PP. 24-48): When President Trump learned that his National Security Advisor Michael Flynn lied to the FBI and others about his telephone conversations with the Russian Ambassador to the United States regarding U. S. sanctions imposed because of Russia's election interference, he met with FBI Director James Comey at a private White House dinner and asked for Comey's loyalty. The day following Flynn's resignation, President Trump in a one-on-one Oval Office conversation with Director Comey said, "I hope you can see your way clear to letting this go, to letting Flynn go."

WATERGATE: In a like situation, when President Nixon learned of his re-election committee's involvement in the Watergate break-in, he instructed his Chief of Staff, H. R. Haldeman, to have the CIA ask the FBI not to go any further into the investigation of the break-in for bogus national security reasons. The Oval Office exchange between the President and Haldeman was on June 23, 1972, six days after the after the arrests at the Watergate complex. The words Nixon used were strikingly like those uttered by President Trump. Nixon said, "And, ah, because these people are playing for keeps, . . .they should call the FBI and say that we wish for the country, don't go any further into this case, period. And that destroys the case."[3]

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MUELLER REPORT RE TERMINATION OF COMEY (PP. 62-77): President Trump called Director Comey multiple times, against the advice of Don McGahn, to have him confirm that he, Trump, was not personally under investigation. Mr. Trump asked Comey to "lift the cloud" of the Russia investigation by saying so to the public. After Comey's testimony to Congress on May 3, 2017, in which he declined to answer questions about whether the President was personally under investigation, the President decided to terminate Comey. The White House dissembled on the reason for firing Comey, but President Trump later admitted in a television interview that he made the decision because "the thing with Trump and Russia is a made-up story." Mr. Trump made similar remarks to visiting Russians in Oval Office.

WATERGATE: The Comey firing echoes Nixon's firing of Special Prosecutor Archibald Cox in the infamous "Saturday Night Massacre" in October 1973. Cox had been appointed after President Nixon fired his Attorney General Richard Kleindienst in April 1973 and the Senate insisted a special prosecutor be appointed by Kleindienst's replacement, Elliot Richardson. Like Comey, Cox was charged with investigating wrongdoing by the President and his advisors and Cox refused an ultimatum from the White House to limit his access to the secret White House tapes by accepting written transcripts, prepared by the White House and verified by a near deaf senior member of the U.S. Senate, former judge John Stennis, rather than allowing Cox to listen to the tapes. When Cox refused this arrangement, Nixon ordered his Attorney General to fire
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Cox, which Richardson refused to do and resigned himself. His deputy, William Ruckelshaus, also refused to fire Cox and also resigned, with the next man in succession, Solicitor General Robert Bork carrying out the president's order to terminate Cox. (Following Cox's firing, a dozen plus bills calling for Nixon's impeachment or creating a special prosecutor were filed in the House. The public pressure was so great, Nixon had to appoint a new special prosecutor, Leon Jaworski. After listening to Nixon's March 21, 1973 secretly recorded conversation with me, Jaworski pursued more tapes as vigorously as had Cox. And by early February 1974, this Committee formally commenced impeachment proceedings.) In short, the firing of FBI Director Comey, like Nixon's effort to curtail the Watergate investigation, resulted in the appointment of Special Counsel Mueller.

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MUELLER REPORT RE APPOINTMENT/REMOVAL OF THE SPECIAL COUNSEL (PP. 78-90, 113-133): According to Mueller's account, Don McGahn played a critical role in interdicting the President's express efforts to fire Special Counsel Mueller. According to the Mueller Report, President Trump directed Mr. McGahn to have the Special Counsel removed on June 17, 2017, over purported conflicts of interest. McGahn refused to follow the President's order, recalling the opprobrium that met Robert Bork following the Saturday Night Massacre. McGahn decided he would resign rather than carry out the orders, not unlike Elliot Richardson and William Ruckelshaus when they refused to fire Cox. For whatever reason, President Trump did not follow up with the directive to fire Mueller and McGahn did not resign. Further compounding the situation in 2018, in response to press reports that McGahn had considered resigning over the direction to fire Mueller, Trump asked another White House official (Rob Porter, also an attorney serving as Staff Secretary) to tell McGahn to dispute the story and create a false record stating that he had not been ordered to have the Special Counsel removed. Again, McGahn's testimony about these events, which are described in detail in the Mueller Report, are important for Congress to understand and, as noted later, claims of executive privilege or attorney-client privilege have been waived (because of disclosure of the Mueller Report authorized by President Trump, and the so-called crime-fraud exception to all privileges).

WATERGATE: This is much like Richard Nixon's attempt to get me to write a phony report exonerating the White House from any involvement in Watergate. Nixon first announced on August 29, 1973, that I had investigated the situation under his direction and found "nobody presently employed at the White House had anything to do with the bizarre incident at the Watergate." Since I had conducted no such investigation, I resisted months of repeated efforts to get me to write a bogus report.

Nixon also sought to influence my testimony after I openly broke with the White House and began cooperating with prosecutors and the Senate Watergate Committee. Nixon met with me privately on the evening of April 15, 1973, to try to influence how I would relate the events, particularly our conversation of March 21, 1973, when I warned him of the "cancer on the presidency." In the March 21 conversation, I tried to convince him to end the coverup, pointing out that paying hush money and dangling pardons constituted obstruction of justice, and that people were going to go to jail, myself included. By April 15, Nixon tried to tell me he was "kidding" about finding $1 million in hush money to pay the burglar defendants to maintain their silence. He was trying to shape my future testimony.
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MUELLER REPORT RE EFFORTS TO CONTROL ATTORNEY GENERAL SESSIONS (PP. 90-98): According to Mueller, in addition to McGahn, President Trump pressured former campaign aide Cory Lewandowski and White House Chief of Staff Reince Priebus to curtail the Special Counsel's investigation through Attorney General Jeff Sessions, who had recused himself from the investigation.

WATERGATE: President Trump repeated efforts to have Attorney General Sessions reverse his recusal – "un-recuse" himself – to take control of the Special Counsel's investigation parallels President Nixon's attempt to control the FBI investigation through his former White House Counsel John Ehrlichman. Later Nixon worked directly with Henry Petersen, the top Justice Department official in charge of the Watergate investigation, once I had broken with the White House. Petersen provided Nixon with confidential information from the prosecutors and the grand jury proceedings. President Nixon's direct interference with the Department of Justice, while facially proper under his Article II constitutional powers, was for the improper purpose of obstructing the investigation. In Watergate, the lesson learned was that no person, even the President, was above the law.

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MUELLER REPORT RE EFFORTS TO PREVENT OR DISTORT DISCLOSURE OF THE JUNE 9, 2016 TRUMP TOWER MEETING (PP. 98-103): According to the report, in June 2017 after emails setting up a June 9, 2016 meeting between senior campaign officials and Russians became known in the White House, the President engaged in efforts to prevent disclosure of the emails and then dictated a false or misleading statement characterizing the meeting as about adoptions in order to protect his son, Don, Jr.

WATERGATE: On the weekend that the Nixon reelection committee men were arrested in the DNC offices at the Watergate, Nixon's campaign manager, and former attorney general, John Mitchell, along with his chief of staff, Bob Haldeman and former White House Counsel, John Ehrlichman, drafted a false press release about the men arrested at the Watergate. This press statement put a coverup in place immediately, by claiming the men arrested at the Democratic headquarters "were not operating either in our behalf or with our consent" in the alleged bugging attempt. The press statement was false. As Nixon's secret tape recordings reveal, President Nixon knew the statement was false, and suspected (correctly) that his former attorney general John Mitchell had approved the operation. (Mitchell would not admit this fact, even privately, for almost a year.) Nixon chose not to disclose the information he did have in order to protect his friend Mitchell, believing that revealing this truth would "destroy" Mitchell.

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MUELLER REPORT RE EFFORTS TO INFLUENCE WITNESSES WITH PARDONS (PP. 6-7, 122-28, 131-32, 134, 147-48, ET AL): The Mueller Report addresses the question of whether President Trump dangled pardons or offered other favorable treatment to Michael Flynn, Paul Manafort, Michael Cohen and Roger Stone (whose name is redacted so I assume it is him based on educated conjecture) in return for their silence or to keep them from fully cooperating with
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investigators. The Mueller Report offers a powerful legal analysis that, notwithstanding the fact the pardon power is one of the most unrestricted of presidential powers, it cannot be used for improper purposes. (See "Separation-of-Powers Principles Support the Conclusion that Congress May Validly Prohibit Corrupt Obstructive Acts Carried Out Through the President's Official Powers," MUELLER REPORT, PP. 171-181). Mueller refutes the dubious contention that when the president exercises his Constitutional powers, he is not subject to federal criminal laws.

WATERGATE: Nixon used the possibility of presidential pardons to keep witnesses from fully testifying in legal proceedings, a practice that was condemned in the Articles of Impeachment drawn up by the House Judiciary Committee in 1974. Howard Hunt's lawyer sought assurances through Nixon's Special Counsel Chuck Colson that Hunt would not spend years in prison if he pled guilty in the trial before Judge Sirica in January 1973. When Colson relayed President Nixon's positive response, Hunt pled guilty and the so-called Cuban American defendants followed his lead and pled guilty, as well. All believed that they could rely on the President to offer clemency under the President's pardon power.

Yet President Nixon knew that offering such pardons or giving pardons to try to control witnesses in legal proceedings was wrong.

In an exchange with me on March 21, 1973, Nixon conceded such a use of the pardon power was improper:

> **DEAN**: Well, that's the problem.
> **PRESIDENT**: That's a problem. You have the problem of clemency for Hunt.
> **DEAN**: That's right. And you're gonna have the clemency problem for the others. They all would have expected to be out and that may put you in a position that's just . . .
> **PRESIDENT**: Right.
> **DEAN**: . . . untenable at some point. You know, the Watergate hearings just over, Hunt now demanding clemency or he's gonna blow. And politically, it'd just be impossible for, you know, you to do it. Because, you know, after everybody...
> **PRESIDENT**: That's right.
> **DEAN**: I'm not sure that you'll ever be able to deliver clemency. It may just be too hot.
> **PRESIDENT**: You can't do it, till after the '74 elections, that's for sure. But even then ... your point is that even then you couldn't do it.
> **DEAN**: That's right. It may further involve you in a way you shouldn't be involved in this.
> **PRESIDENT**: *No, it would be wrong.* That's for sure. [Emphasis added.]

Similarly, when President Nixon met with me on April 15, 1973, after my break with the White House, he raised the concern about the Hunt pardon again. We were in his Executive Office Building office late on a Sunday night when he got up from his chair and walked to the corner of the room and in a stage-whisper asked me, "I was wrong to offer clemency to Hunt, wasn't I?" I responded, "Yes, Mr. President, that would be an obstruction of justice." As I later testified, at the time it struck me his moving across the office and whispering was to keep what he was saying from being picked up by a hidden microphone in the room. This small piece of

testimony, of course, became highly significant for it led to the discovery of the secret White House taping system.

The point is: Richard Nixon knew he could not use his pardon power, unrestricted as it is in Article II, for the improper purpose of gaining the silence of witnesses in legal proceedings.

McGahn's Dilemma Testifying Before This Committee

Mr. McGahn has expressed concern about being caught between two branches of government in responding to this Committee's subpoena for his documents and testimony. For several reasons I believe he should testify. First, he is a key witness in understanding the Mueller Report. Secondly, I believe as an attorney, he has an ethical obligation to testify.

Let me briefly address the ethics question. Following my testimony before the Senate in 1973, the American Bar Association began to look anew at its code of legal ethics. My telling the Senate Watergate Committee of how so many lawyers found themselves on the wrong side of the law during Watergate hit a chord. I learned this fact from Robert Kutak, with whom I had a friendship from our days when we worked as staffers for Congress. Bob, as a leading legal scholar, was asked to chair an ABA commission to reconsider the ABA's Code of Professional Conduct in light of the Watergate scandal. I met with Kutak and his commission to provide my own insights.

One of the major clarifications that came about through the new ABA Model Rules was with respect to an attorney's obligations when representing an organization. Every and the District of Columbia have adopted a version of these rules. Model Rule 1.13 provides that a lawyer representing an organization represents the entity and not the individuals running the entity. Hence, it is now clear that White House Counsel represents the Office of the Presidency and not the current occupant of that office.

Rule 1.13 further provides that when an attorney representing an organization encounters ongoing crime or fraud, he or she must first try to solve the problem within the organization, by "going up the ladder" to the highest authority that can address the problem. In a corporation, for example, the attorney would report up to the board of directors or a special committee of the board.

If the problem cannot be solved internally, Model Rule 1.13 provides that an attorney *may* report out, despite his or her confidentiality, what is going on, despite his duty of confidentiality or the attorney-client privilege. This "reporting out" provision provides lawyers with leverage to stop wrongdoing if the client fails to take appropriate advice.

Since 2011, I have been using the mistakes I made as a young White House lawyer to teach this rule of ethics with a continuing legal education partner, Jim Robenalt, who is here today. Jim is a trial attorney and a partner in a major multi-state law firm. Eight years ago, we created a course called The Watergate CLE. Since we began, we have presented over 150 programs throughout the United States, reaching somewhere between 45,000 to 50,000 attorneys.

Don McGahn represented the Office of the Presidency, not Donald Trump personally. This appears to have been well understood by McGahn and his lawyer, and I have read news accounts that McGahn has explained this concept to President Trump. In short, McGahn's loyalty is to his client, the Office of the Presidency, not the occupant. He had only a limited attorney-client privilege when interacting with the President and advisors and the privilege belongs to the Office in any event.

Jim Robenalt and I have discussed this at length. We also talked with Michael Frisch, a friend who is the Ethics Counsel at Georgetown University Law Center. We believe Don McGahn is not in a conflict situation in testifying to this Committee, for his duty is to protect the Office of the Presidency, sometimes against the very person in charge of it.

To the extent Mr. McGahn wishes to assert Executive Privilege or the Attorney-Client privilege, he can do so, but those privileges were waived regarding the material plainly set forth in the Mueller Report. In addition, it has long been the rule there is no executive privilege attached to criminal or fraudulent activity. Accordingly, I sincerely hope that Mr. McGahn will voluntarily appear and testify. His silence is perpetuating an ongoing coverup, and while his testimony will create a few political enemies, based on almost 50 years of experience I can assure him he will make far more real friends.

Thank you.

Chairman NADLER. Thank you.
Professor Vance.

TESTIMONY OF JOYCE WHITE VANCE

Ms. VANCE. Good afternoon, Chairman Nadler, Ranking Member Collins, and members of the committee. Thank you for calling this hearing and for giving me the opportunity to testify and answer your questions.

Let me cut right to the chase, because I am a law professor, and so I'll start with some basic legal context. The Federal principles of prosecution direct prosecutors to indict a case only if they believe they can obtain and sustain a conviction. That means obtain a conviction at trial, sustain it on appeal.

The Mueller report sets out the three elements prosecutors have to be able to prove for each charge of obstruction of justice they would potentially bring: an obstructive act, a nexus between that act and an official proceeding, and a corrupt intent. So those are the three elements prosecutors would have to be able to prove beyond a reasonable doubt at trial.

Because the special counsel followed DOJ policy and guidance in memos issued by the Office of Legal Counsel that prohibit indicting a sitting President, the report analyzed the evidence it contained without making an ultimate decision as to whether the evidence was sufficient to indict.

Now, people can debate the merits of that position that's taken by the Office of Legal Counsel in the memo, but as long as that memo is in effect, it binds DOJ lawyers—and Robert Mueller, in his consideration—committed to following the law.

I have reviewed Volume II of the special counsel's report, which lays out the evidence collected while investigating 10 potential instances of obstruction of justice. And based on my years of experience as a prosecutor, if I was assessing that evidence as to a person other than a sitting President who's covered by the OLC memo, the facts contained in that report would be sufficient to prove all of the elements necessary to charge multiple counts of obstruction of justice. The evidence is not equivocal, nor is the charging decision a close call. And I would be willing to personally indict the case and to try the case. I would have confidence that the evidence would be sufficient to obtain a guilty verdict and to win on appeal.

Here's what I see, as a prosecutor reading this report. There is an attack by a foreign country on our country and on our elections, and on multiple occasions the President tried to thwart it, curtail it, or end it completely either by removing Mueller outright or by interfering with his ability to gather evidence.

Here are some examples of the President's behavior, documented by witness testimony and evidence collected by the special counsel.

In the middle of the investigation, the President ordered his White House counsel to fire the special counsel. When that effort to fire the counsel became the subject of news reports, the President asked his White House counsel to lie about it and to create a false record to back up the lie.

When the White House counsel declined to carry out his orders, the President moved outside of government, asking his former campaign manager to get the Attorney General to unrecuse and to re-

strict the investigation to interference in future elections—in other words, no investigation into the President's conduct, the conduct of his associates, or the conduct of Russia in attacking our elections.

When the President's campaign manager refused to carry out this order, the President began to pressure the Attorney General personally, telling him in the Oval Office that he would be a hero if he unrecused himself and making clear at the same time that he would be fired if he didn't carry out the President's demands. And he was ultimately fired.

The President pressured multiple aides, including General Flynn, Manafort, and Cohen, not to cooperate with the investigation. He dangled the possibility of pardons if they didn't cooperate with the investigation. The President's personal counsel told his former campaign manager, Manafort, that he would be taken care of if he sat tight and refused to cooperate.

This is some of what I see in the report. Based on my experience of more than 25 years as a Federal prosecutor, I support the conclusion that more than 1,000 of my former colleagues came to and that I cosigned in a public statement last month, saying that if anyone other than a President of the United States committed this conduct, he would be under indictment today for multiple acts of obstruction of justice.

The Mueller report has an extensive discussion, a layout of legal analysis about why a President is not above the law, this theory that we've discussed about a unitary Executive and the scope of Presidential power. But you don't have to be a legal expert to understand that in this country no one is above the law. If you or I had committed this same conduct, we would've been charged by now.

So the task before this committee and Congress is not an easy one. It doesn't bring me any pleasure to have to discuss these facts. I suspect it does not bring you pleasure to have to consider them. But I am honored and sobered to have this opportunity to contribute to your work, and I hope I can be helpful in answering any questions that you have.

Thank you very much, Mr. Chairman.

[The statement of Ms. Vance follows:]

Lessons from the Mueller Report: Presidential Obstruction and Other Crimes

Hearing Before the House Committee on the Judiciary
Monday, June 10, 2019

Statement for the Record of Joyce White Vance
Former United States Attorney, Northern District of Alabama
Professor from Practice, University of Alabama, School of Law

Good afternoon, Chairman Nadler, Ranking Member Collins, and Members of the Committee. Thank you for calling this important hearing and inviting me to testify.

My name is Joyce White Vance. Currently, I am a Professor of the Practice of Law at the University of Alabama Law School, where I focus on criminal law. Before joining the law school faculty, I was the U.S. Attorney for the Northern District of Alabama, leading an office in which I served for more than 25 years. I entered duty in that office as an Assistant U.S. Attorney on July 1, 1991. I was hired by U.S. Attorney Frank Donaldson, an appointee of President Reagan, and served in the criminal division as a line prosecutor for the next ten years, under both Republican and Democratic administrations, until I moved to our appellate division, ultimately serving as chief of that division before I was confirmed as the office's U.S. Attorney in 2009. I was in the first group of U.S. Attorneys the Senate confirmed during the Obama administration, and served until I retired on January 19, 2017. While I was a U.S. Attorney, I served on the Attorney General's Advisory Committee and co-chaired its Criminal Practice Subcommittee.

Like all prosecutors, all people, I'm an individual with personal views on politics and social issues. But one of the very first things I learned as a young prosecutor was to leave personal views at the office door when I entered on duty. And I instructed the assistant U.S. attorneys who served while I was U.S. Attorney to do the same. For prosecutors, there are only two relevant considerations when determining whether a case should be indicted: the law and the facts.

Although respect for career government employees has gone out of fashion, as someone who had the honor of serving, I can tell you that my Justice Department colleagues were rigorous in developing and analyzing evidence during an investigation and in applying the law to those facts without fear or favor. The Justice Department has a long tradition of independence from political influence, which is particularly important in the decision-making process criminal cases. The people with whom I served were deeply committed to ensuring that no one was above the law.

That's the framework that I use for reviewing the evidence detailed in the Mueller Report, to consider whether any of the conduct it discusses merits criminal prosecution. I understand that Congress has broader powers to sanction conduct that may be corrupt or abusive but not criminal, but I limit my consideration of the evidence gathered during the Special Counsel's investigation to its prosecutive merit.

In his report, Special Counsel Mueller declined to make a traditional prosecutive decision. In other words, he did not state expressly whether the evidence developed during his investigation into obstruction of justice was sufficient to warrant an indictment.

There has been a lot of criticism and confusion about why he did this. Two decades-old opinions issued by the Justice Department's Office of Legal Counsel ("OLC")—one during the Nixon era

and another following President Clinton's impeachment—establish a Justice Department policy against indicting a sitting President. OLC policies are binding on prosecutors considering whether to indict a case. People can and are debating the wisdom of this particular policy, but federal prosecutors must and Mueller did accept it as controlling, as do I for purposes of discussion of the report.

Because the OLC policy prevented indictment, Mueller concluded that stating whether the President's actions amounted to crimes, while not giving him a judicial forum in which he could contest that determination, raised prudential concerns about fairness and could impair the President's ability to carry out his duties effectively. In light of those concerns, Mueller explained the elements prosecutors must establish to indict an obstruction charge, laid out the evidence his investigation had revealed for each instance of conduct he investigated, and analyzed whether there was sufficient evidence to establish each element. But he left the ultimate conclusions about the President's conduct to the American people and their elected representatives, and possibly for future prosecutors to consider when the President is no longer in office.

It is worth noting Mueller's approach is not entirely unprecedented. DOJ's Principles of Prosecution provide prosecutors with a number of options when assessing the evidence at the conclusion of an investigation. They may choose to indict. They may decide indictment is not warranted. But they also may refer the case to a prosecutor with superior jurisdiction.[1] For me, as a U.S. Attorney, that sometimes meant that although I concluded federal law did not prohibit a target's conduct or there was not a sufficient federal interest to indict under federal law, a matter should be referred to a local district attorney for consideration under state law. Here, Mueller appears to have done something akin to that, referring the results of his investigation to Congress, the superior forum to consider whether the President should be charged in some manner since DOJ policy stripped Mueller of authority to do so. That makes sense in light of OLC's conclusion that a president, while he cannot be indicted, can be impeached in Congress if the House feels his conduct warrants it.[2]

Mueller explains that the decision not to indict is not the same thing as exonerating the President. The report says:

> [I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the

[1] Justice Manual, Principles of Federal Prosecution § 9-27.240, *available at* https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.240.

[2] Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, *Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office* (Sept. 24, 1973).

> applicable legal standards, however, we are unable to reach that judgment. . . . Accordingly, while this report does not conclude that the President committed a crime, it also does not exonerate him.

Department of Justice, Special Counsel Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election* at Vol. II, p. 2 (2019) ("Report").

Although the Report didn't address the ultimate question, Volume II provides us with a roadmap for assessing the President's conduct, the subject of today's hearing. The crime of obstruction of justice is set forth in a series of statutes that overlap in some regards. The report clarifies the law in the beginning of Volume II, explaining there are, "[t]hree basic elements . . . common to most of the relevant obstruction statutes: (1) an obstructive act; (2) a nexus between the obstructive act and an official proceeding; and (3) a corrupt intent." Report, Vol. II, p. 192.

Prosecutors must have sufficient proof to satisfy each of these elements for each separate instance, or count, of obstruction, they intend to charge in an indictment. Proving two of three elements isn't enough. And, if a prosecutor intends to charge a defendant with more than one count of obstruction, they must have proof of all of the elements of the crime for each of those counts.

Cognizant of those rules, the report identifies ten instances of conduct the investigation uncovered and analyzes the strengths and weaknesses of the evidence as to each element for each potential obstructive act, although as noted above, it does not take the final step of concluding whether indictment is warranted.

As the rules of decorum have been explained to me, I am not permitted to provide my legal conclusion about whether indictment would be warranted based on the facts presented in the report. But, I have opined, along with other former federal prosecutors who have served in both Republican and Democratic administrations, outside of the bounds these rules.

Mueller was investigating an attack on our democracy by a hostile foreign power, and on multiple occasions, the President tried to thwart it, curtail it, or end it completely, either by removing the Special Counsel outright or interfering with his ability to gather evidence. In Volume II of the Report, Mueller meticulously lays out the evidence for each of these ten instances of potential misconduct and in each instance, he identifies the evidence relating to each of the three elements of the crime. Mueller also analyzed evidence that would cut against the President's culpability, but often there was no such mitigating evidence to consider.

While the report details discrete acts, it is also important to look at the big picture in order to discern the broader pattern of the President's intent and conduct. As Mueller wrote, "[t]hat pattern sheds light on the nature of the President's acts and the inferences that can be drawn about his

intent." Report, Vol. II, p. 157. This pattern began almost immediately after the President took office in January 2017, when he pressured FBI Director James Comey to stop investigating his National Security Advisor Michael Flynn for lying to federal investigators about conversations Flynn had with the Russian Ambassador regarding efforts to lighten sanctions on Russia for its interference in our elections. And the President's behavior continued through to the end of Mueller's investigation, with the last instance detailed in his report occurring in January 2019, as President Trump reportedly tried to intimidate his former personal attorney Michael Cohen, seeking to discourage Cohen's cooperation with federal criminal investigations. In evaluating evidence of this nature, prosecutors tend to look at the full scope of an individual's conduct, the totality of the evidence, to determine whether there is corrupt intent to engage in wrongdoing.

Rather than trying to focus on each of these courses of conduct, I'm going to focus on just one instance, to illustrate how Mueller analyzes the evidence in light of the law, and how prosecutors might proceed to a decision based on that analysis: the conduct that is discussed beginning on page 113 of Volume II of the report and labeled, "The President Orders [White House Counsel Don] McGahn To Deny That The President Tried To Fire The Special Counsel."

We start with a summary of the relevant facts: On January 25, 2018, the media reported that, in June 2017, the President ordered McGahn to have Special Counsel Mueller fired. The investigation revealed that the President told McGahn to call Deputy Attorney General Rod Rosenstein and tell him that Mueller had conflicts and could not be the Special Counsel. McGahn interpreted this as an order to fire Special Counsel Mueller although the President did not use the word "fire." The report relays that the President had been told any conflicts were insubstantial. McGahn refused to fire Mueller and told the White House Chief of Staff that he was going to resign because the President had asked him to "do crazy shit."

After the story broke, according to the report, the President directed McGahn to lie about his previous order and deny that he ever asked McGahn to fire the Special Counsel. The President made four separate attempts to have McGahn change his story and put into writing a repudiation of the media reports, with a new story saying the President never ordered him to have Mueller fired.

- First, on January 26, 2018, the President had his personal counsel call McGahn's lawyer and tell him McGahn "needed to put out a statement denying he had been asked to fire the Special Counsel and that he had threatened to quit in protest." McGahn said the story correctly reported the President "wanted the special counsel removed" and that although it was inaccurate in other regards, he would not make the statement the President wanted.

- On January 26, the President also directed his press secretary to contact McGahn about the story. McGahn told her parts of it were accurate and there was no need to respond.

- On February 5, 2018, the President told White House Staff Secretary Rob Porter that the article was "bullshit." The President directed Porter to tell McGahn to "create a record to make clear that the President never directed McGahn to fire the Special Counsel." The President wanted McGahn to write a letter "for our records," more than a press statement, to say the media reports were wrong. The President told Porter something to the effect that he might have to get rid of McGahn if he wouldn't do this. Porter repeated the conversation to McGahn, who told Porter the report was true and that he had been prepared to resign rather than fire Mueller, although he didn't personally convey his threatened resignation to the President. McGahn again declined to write the letter the President wanted.

- On February 26, 2018, a meeting was scheduled for McGahn to meet with the President in the Oval Office to discuss the press report. The President told McGahn the report didn't "look good" and he needed to fix it. He told McGahn he had not said he wanted Mueller fired. McGahn told the President the story was accurate, with the exception of the detail that he had not told the President directly he planned to resign rather than fire Mueller. He agreed that the President didn't use the word "fire" but he understood the order to call Rosenstein and tell him Mueller couldn't be Special Counsel as an order to have Mueller fired. The President asked McGahn to "do a correction" and McGahn declined. In this same conversation, the President asked why McGahn told the Special Counsel, when he was interviewed, about the President's efforts to have Mueller fired and also about why he took notes in meetings, noting, "[l]awyers don't take notes." McGahn assured him that real lawyers do take notes.

Next, Mueller analyzed those facts in the context of the three elements necessary to prove obstruction; an obstructive act, a nexus to a proceeding, and corrupt intent.

- Obstructive act: "The President's repeated efforts to get McGahn to create a record denying that the President had directed him to remove the Special Counsel would qualify as an obstructive act if it had the natural tendency to constrain McGahn from testifying truthfully or to undermine his credibility as a potential witness if he testified consistently with his memory, rather than with what the record said." Report, Vol. II, p. 118.

- Nexus to an official proceeding: "The President was aware that the Special Counsel was investigating obstruction-related events. . . . If the President were focused solely on a press strategy in seeking to have McGahn refute the New York Times article, a nexus to a proceeding or to further investigative interviews would not be shown. But the President's efforts to have McGahn write a letter 'for our records' approximately ten days after the stories had come out—well past the typical time to issue a correction for a news story—indicates the President was not focused solely on a press strategy, but instead likely

contemplated the ongoing investigation and any proceedings arising from it." Report, Vol. II, p. 119-20.

- Intent: "Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct towards the investigation." Report, Vol. II, p. 120.

Mueller walks through a similar analysis for each of the ten instances of potentially obstructive conduct. This is the process that needs to be used: a methodical weighing of the evidence for each event against the legal standard for proving obstruction.

At his press conference last week, Mueller said, as many experienced prosecutors predicted he would, that the report speaks for itself. In other words, the report contains all of the evidence his team obtained and their assessment of it. The report is the best path to seeking the truth here. But, our analysis today is informed by a redacted version of the report and it is clear that if we had access to an unredacted version and underlying documents, it would add to and not subtract from the available evidence to support these conclusions regarding the President's conduct. Mueller states in Volume I of the report that he did not have sufficient evidence to charge a conspiracy between the Trump campaign and members of the Russian Government to interfere in the election. But he notes investigators were prevented from gaining access to testimony and evidence in a number of ways and that the assessment of the facts could change with the availability of additional evidence they were prevented from obtaining. So too, with regard to the assessment of obstruction, it is important to note that conclusions are drawn based on the available evidence. We do not know for certain, but, while it is unlikely that redacted portions of the report would contain exculpatory evidence, it is possible that they would reinforce the strength of any conclusions regarding potential misconduct.

Based on my experience of over twenty-five years as a prosecutor, I believe the conduct described in Article II of the Report warrants further congressional scrutiny under Congress' oversight and Article I powers.

As the Members may know, I signed a public statement concerning these issues with more than 1000 of my former colleagues. Those former federal prosecutors include political appointees to high ranking positions at DOJ under both Republican and Democratic presidents, but far more importantly, the vast majority were career prosecutors who were never political appointees but instead civil servants within the Department, in some cases for decades, as I was for almost 18 years before being appointed as U.S. Attorney. We reached our conclusion based on the law and the facts. There is no room for politics in the decisions made by prosecutors.

As former prosecutors, we understand just how serious the crime of obstruction of justice actually is. Congress has designated conduct intended to obstruct justice as a crime because if people engaged in misconduct were free to obstruct investigations into their crimes, our entire criminal justice system would crumble. To prosecute and convict criminals, we must obtain evidence and present witness testimony. If we can't do those things, criminals go free. That's why obstruction does not require proof of an underlying crime. The law says so and logic tells us the same thing; if an underlying crime were required to obtain an obstruction conviction, then the most successful obstructors, the ones who did the best job of concealing their crimes from investigators, would get off with no charges at all. Through our criminal law of obstruction, we convey our expectation that all Americans tell the truth and cooperate with investigations into federal crimes and not seek to undermine our system of justice. Certainly we should expect at least that much of our President.

Because of the serious nature of obstruction of justice, Congress has also decided to criminalize not just the completed act of obstruction, but also attempts, or what is called inchoate (or incomplete) crimes of obstruction. In other words, one need not succeed in obstructing justice to be guilty of the crime. We are worried about people who try to interfere with the workings of the criminal justice system and their guilt is judged by their acts and intentions, not by whether they actually succeed.

As Special Counsel Mueller explained at his press conference:

> The matters we investigated were of paramount importance. It was critical for us to obtain full and accurate information from every person we questioned. When a subject of an investigation obstructs that investigation or lies to investigators, it strikes at the core of their government's effort to find the truth and hold wrongdoers accountable.

Finally, some people, including the President's lawyers and our current Attorney General, take an expansive view of the powers of the presidency and suggest that a president *cannot* be guilty of obstruction of justice when exercising the powers of his office. Even the President's lawyers concede he could be charged with obstruction of justice by bribing a witness or suborning perjury, Report, Vol. II, p. 8, because the Constitution gives him neither the power to bribe or encourage people to commit perjury. But they believe actions he takes, using his executive power, can never subject him to criminal prosecution. They believe that because he is entitled, for instance, to remove executive branch officials, even law enforcement officers who are investigating him, without regard to his motivation. This is a strained interpretation of the law, the result of which is to say that a president can use that power for corrupt purposes, such as to impede an investigation into his own potential wrongdoing. The principle that no one is above the law, not even a president, is the animating principle in our constitutional structure. Illinois' former Governor Rod Blagojevich was convicted of federal crimes for performing an act within his official powers, appointing a new Senator to an empty seat. But he was convicted because he did that otherwise

lawful act in exchange for a bribe. Similarly, the Report concludes corrupt use of authority by a president can be charged under the obstruction statutes "in order to protect the integrity of the administration of justice." *Id.*

Mueller resolves any tension between the President's Article II powers and Congress's authority to regulate the President's exercise of official duties to prohibit actions motivated by a corrupt intent to obstruct justice by relying, in part, on the Constitution's Take Care Clause. The Take Care Clause, in Article II, Section 3, requires the President to "take care that the laws be faithfully executed." The constitutionally prescribed Oath contains a similar command to "faithfully execute" the office (i.e., the powers assigned) and to "preserve, protect and defend the Constitution of the United States." It was no accident that the Framers included this requirement in the Constitution twice—for representative government only works if those in office act in good faith and in the public interest, not corruptly for his own self-interest.

The task before this Committee and before the Congress is not an easy one. Co-equal branches of government must operate with deference and respect for the powers our Constitution grants to each branch. But the Framers established co-equal branches not to grease the wheels of corruption but to ensure that each branch serves as a powerful check on the others. And the Congress—constitutionally, the first branch among equals—has a duty to investigate, expose, and hold accountable anyone who abuses the power of the presidency. This hearing is a first step in fulfilling that duty, and I am both honored and sobered to contribute to this essential work.

Thank you, Mr. Chairman and Members of the Committee.

Chairman NADLER. Thank you.
Mr. Malcolm.

TESTIMONY OF JOHN MALCOLM

Mr. MALCOLM. Chairman Nadler, Ranking Member Collins, and distinguished Members of Congress, I am the vice president of the Institute for Constitutional Government at The Heritage Foundation. I have also served as a deputy assistant attorney general and assistant United States attorney and associate independent counsel and as criminal defense attorney.

Special Counsel Mueller deserves a lot of credit for conducting a thorough investigation. While Volume I of his report chronicles in detail how the Russians attempted to interfere in our election and concludes that no one in the Trump campaign was involved in that unlawful effort, I am less enthusiastic about Volume II.

Under the applicable regulations, it was the special counsel's duty to provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by him. By not making a traditional prosecutorial judgment with respect to the obstruction-of-justice allegations, Mr. Mueller failed to fulfill that duty.

While governing OLC opinions provide that a sitting President cannot be indicted, there was nothing to preclude the special counsel from stating that the evidence would be sufficient to convict the President of obstruction of justice if that's what he believed.

By not doing so, the special counsel put the Attorney General in the difficult situation of having to make that decision. Here, General Barr's determination that the evidence is insufficient to establish that the President attempted to obstruct justice is eminently reasonable.

While it is possible for someone to obstruct justice who did not commit the offense that is under investigation, it is extremely rare. In the overwhelming majority of cases, individuals who attempt to obstruct justice do so because they know darn well that they've committed a crime and fear that the investigation will uncover that fact.

Moreover, it is almost invariably the case that someone attempting to obstruct an investigation also engages in other nefarious activities, such as destroying evidence, suborning perjury, bribing witnesses, or threatening them with bodily harm.

Here, the President provided over a million pages of documents, allowed key members of his staff to be interviewed, and submitted written answers to questions. These are not the actions of someone attempting to obstruct an ongoing investigation, despite being clearly maddened by its existence.

In obstruction-of-justice cases, the most difficult thing to establish is that the accused acted with a corrupt intent—that is, for an illegitimate purpose. When someone destroys evidence or threatens witnesses, this task is relatively straightforward. Not so here.

The President had perfectly legitimate reasons to be exasperated by the cloud hanging over his Presidency from this investigation and for wishing it to come to a speedy conclusion. The investigation caused some to question the legitimacy of his election, because the allegations involve claims that high-level people in his campaign

engaged in a conspiracy with Russia to steal the election. The President repeatedly expressed concerns that the investigation was hampering his ability to govern and to engage in foreign relations, especially with Russia.

President Trump might well have concluded that the investigation should be curtailed or even terminated, because it was impeding his ability to do the job that the American people elected him to do. Such an alternative non-corrupt motive, rather than naked self-interest, might also explain his conduct.

Further, adopting Mueller's legal theory could have a chilling effect on a President, who might well hesitate before engaging in some controversial action, such as removing an official, signing an Executive order, or issuing a pardon, out of fear that his subjective intent might be questioned at some point in the future by a prosecutor, perhaps a politically motivated one, undertaking a criminal investigation.

For this reason, the law requires that Congress issue a clear statement before a generally worded statute, such as the one that Mr. Mueller relied upon, can be applied to the President. No such clear statement exists here.

To be sure, OLC has stated that some statutes, such as the bribery statute, can be applied to the President. However, while it is easy to disentangle facially criminal acts, such as paying a bribe or threatening a witness, from legitimate exercises of Presidential authority, the same cannot be said of many of the acts that were investigated by the special counsel, such as criticizing the fairness of the investigation, asking subordinates to publicly defend him, removing an official, or contemplating issuing a pardon, each of which may have been undertaken for a mixed motive or an entirely pure one. Deciding which is which would inevitably interfere with the President's ability to serve the Nation as he sees fit in the exercise of his Article II powers, thereby raising profound separation-of-powers issues.

While it is certainly true that no man, including the President of the United States, is above the law, it is equally true that the President occupies a unique position in our constitutional structure and that some laws apply differently to him, and some don't apply at all, at least when there has been no clear statement by Congress that the law should apply to him or when doing so might impinge upon the exercise of his constitutional prerogatives.

I thank you for inviting me here to testify today, and I look forward to answering any questions you might have.

[The statement of Mr. Malcolm follows:]

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LEGISLATIVE TESTIMONY

Lessons from the Mueller Report: Presidential Obstruction and Other Crimes

Testimony before the Committee on the Judiciary
U.S. House of Representatives
June 10, 2019

John G. Malcolm
Vice President, Institute for Constitutional Government
Director and the Ed Gilbertson and Sherry Lindberg Gilbertson Senior Legal Fellow, Edwin Meese III Center for Legal and Judicial Studies
The Heritage Foundation

Chairman Nadler, Ranking Member Collins, and distinguished Members of Congress:

Thank you for the opportunity to speak to you today about Volume II of the Mueller Report. My name is John Malcolm. I am the Vice President of the Institute for Constitutional Government and the Director and the Ed Gilbertson and Sherry Lindberg Gilbertson Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.[1] I have also spent a good deal of my career involved in the criminal justice system—as an Assistant United States Attorney, an Associate Independent Counsel, a Deputy Assistant Attorney General in the Criminal Division at the U.S. Justice Department, and a criminal defense attorney.

Special Counsel Mueller deserves a lot of credit for conducting a thorough investigation. As stated in his Report, he "employed 19 lawyers who were assisted by a team of approximately 40 FBI agents, intelligence analysts, forensic accountants, and other professional staff." His office "issued more than 2,800 subpoenas, executed nearly 500 search warrants, obtained more than 230 orders for communications records, issued almost 50 orders authorizing use of pen registers, made 13 requests to foreign governments for evidence, and interviewed approximately 500 witnesses." This should, of course, come as no surprise to anyone who is at all acquainted with Robert Mueller.

Volume I of the Mueller Report also contains important information about how the Russian government attempted to interfere in our election. The Russians, and likely other governments, have probably been doing this for years, and we cannot afford to be complacent about the continuing threats that this poses to the integrity of our elections. Regarding the so-called "collusion" issue, the Report states that "the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities." In other words, with respect to the subject matter that prompted the appointment of the Special Counsel in the first place, there was no underlying crime committed by anyone connected to the Trump campaign, though it was not from a lack of trying by the Russians.

For the reasons that I shall articulate below, I am less enthusiastic about Volume II of the Special Counsel's Report, which is the subject of this hearing.

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I. Special Counsel Mueller failed in his duty to make a decision about whether a prosecutable case of obstruction of justice existed, and he applied an erroneous "exoneration" standard as part of his analysis

Under the regulations governing his appointment, it was the duty of the Special Counsel to "provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the Special Counsel."[2] The Attorney General would then have to determine, subject to notifying Congress, whether "any ... prosecutable step" recommended by the Special Counsel was nullified because it is "so inappropriate or unwarranted under established Departmental practices that it should not be pursued."[3] By deciding "not to make a traditional prosecutorial judgment"[4] with respect to the allegations of obstruction of justice, Special Counsel Mueller failed to fulfill that duty.

The Special Counsel reiterated in his Report that governing opinions from the Department of Justice's Office of Legal Counsel (OLC) provide that a sitting president cannot be indicted.[5] While that is certainly true, there was nothing to preclude him from concluding and stating in his confidential report to the Attorney General that the evidence his Office uncovered would be sufficient to charge and convict the President of various criminal offenses, just as Independent Counsel Kenneth Starr did at the conclusion of his Office's investigation against President Clinton. After all, the President could always be indicted once he leaves office. Besides, if it was Mr. Mueller's belief that the OLC opinions would preclude him from making such a determination, then it would be reasonable to ask why he ever bothered to investigate whether the President committed obstruction of justice in the first place.

Further compounding that error, the Special Counsel's Report stated that, with respect to the issue of obstruction of justice, the evidence "prevent[ed] it from conclusively determining that no criminal conduct occurred."[6] The Report further states that while the evidence "does not conclude that the President committed a crime, it also does not exonerate him."[7]

With all due respect, the role of a prosecutor is not to "exonerate" someone who is under investigation. It is to decide whether there is enough evidence to charge somebody with a crime. If so, then it is up to a jury to decide, via a unanimous verdict and after a trial in which the government's evidence is subject to challenge, whether the government, in fact, has established a defendant's guilt beyond a reasonable doubt. I would also note that a jury verdict of "not guilty" is also not a definitive determination that the accused did not commit the crime with which he was charged; it is only a determination that the government did not prove his guilt beyond a reasonable

[2] 28 C.F.R. § 600.8(c).
[3] 28 C.F.R. § 600.9(a)(3).
[4] Mueller Report, Volume 2, pg. 1.
[5] See Memorandum from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, Re: A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. OLC 222 (2000); Memorandum from Robert G. Dixon, Jr., Assistant Attorney General, Office of Legal Counsel, Re: Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office (Sept. 24, 1973).
[6] Mueller Report, Volume 2, pg. 2.
[7] Id.

doubt. In our system of justice, the accused is cloaked with the presumption of innocence, and it is never his burden to exonerate himself by definitively establishing his innocence of the crime under investigation.

Prosecutors in the Department of Justice are supposed to conduct thorough investigations and then make a binary choice about whether a prosecutable case exists or not, nothing more, nothing less. Robert Mueller was appointed to make that decision, subject to review by the Attorney General to whom he reported. The Special Counsel put the Attorney General in a difficult situation by not making a prosecution decision. As a result, the Attorney General was called upon to make a prosecution decision on behalf of the Department, which he did after consulting with Deputy Attorney General Rod Rosenstein and various career attorneys within the Department.[8]

While the president's behavior throughout the course of this investigation was, at times, certainly impulsive, intemperate, and ill-advised, prosecutors are guided by facts and the law, not *Miss Manners' Guide to Excruciatingly Correct Behavior.*[9] Whether the American people approve or disapprove of the President's unconventional and at times uncivil conduct is up to them. As General Barr said during his recent testimony before the Senate Judiciary Committee: "The report is now in the hands of the American people. Everyone can decide for themselves. There's an election in 18 months. That's a very democratic process. But we [the Justice Department] are out of it. We have to stop using the criminal justice process as a political weapon."

II. Attorney General Barr's conclusion that a prosecutable case did not exist was eminently reasonable given the facts uncovered and the difficulty of establishing corrupt intent

Moreover, given the facts presented by the Special Counsel in his Report, General Barr's conclusion that the evidence was "not sufficient to establish that the President committed an obstruction-of-justice offense"[10] beyond a reasonable doubt is eminently reasonable, even though there may be some former prosecutors who disagree.

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[8] As General Barr stated in his March 24, 2019 letter to Congress:

> After reviewing the Special Counsel's final report on these issues; consulting with Department officials, including the Office of Legal Counsel; and applying the principles of federal prosecution that guide our charging decisions, Deputy Attorney General Rod Rosenstein and I have concluded that the evidence developed during the Special Counsel's investigation is not sufficient to establish that the President committed an obstruction-of-justice offense. Our determination was made without regard to, and is not based on, the constitutional considerations that surround the indictment and criminal prosecution of a sitting president.

See Barr March 24, 2019 letter at pg. 2, available at https://www.documentcloud.org/documents/5779699-Letter-to-Congress-detailing-Robert-Mueller-s.html (last visited on June 7, 2019).

[9] Judith Martin, Miss Manners' Guide to Excruciatingly Correct Behavior, W.W. Norton & Co. (2005).

[10] Barr March 24, 2019 letter at pg. 3.

Although there are many obstruction of justice statutes,[11] the offense generally applies to someone who commits an obstructive act with a corrupt intent[12] in connection with an official proceeding. And while I agree with the other witnesses on this panel that it is possible for an individual to commit the crime of obstruction of justice to impede an investigation even when he did not commit the underlying offense that is being investigated -- perhaps to avoid the disclosure of embarrassing but non-criminal information – such a prosecution would be extremely rare. In the overwhelming majority of cases, individuals who attempt to obstruct justice do so because they know darn well that they committed the crime that is being investigated and fear that the investigation will uncover that fact. Certainly, any prosecutor considering charging someone with obstruction of justice would give considerable weight if his or her investigation revealed that the person did not, in fact, commit the underlying offense that was being investigated, as happened here.[13]

Moreover, it is almost invariably the case that someone attempting to obstruct an investigation simultaneously engages in other nefarious activities, such as destroying evidence, suborning perjury, bribing witnesses, or threatening them with (or actually inflicting) bodily harm. That is critically important. Obstruction of justice laws are designed to protect the fact-finding process from attempts to impair the integrity or availability of evidence or to compromise the ability of investigators to fulfill their duties. Here, the President engaged in no such obviously illegitimate conduct. President Donald Trump allowed key members of his staff, including his Chief of Staff and the White House Counsel, to be interviewed by the Special Counsel's Office, some on several occasions. He also provided more than a million pages of documents to the Special Counsel's Office and submitted written answer to questions that the Special Counsel posed to him. These actions certainly are not the actions of someone attempting to stonewall or frustrate an ongoing investigation, despite clearly being maddened by its existence.

As is the case in many (if not most) criminal prosecutions, the most difficult element of the crime to establish beyond a reasonable doubt is that the accused acted with the requisite unlawful intent. In obstruction of justice cases, federal law requires a showing of "corrupt" intent -- that is, proof that the defendant acted for an illegitimate purpose. When someone destroys or falsifies evidence or threatens witnesses, proof that the defendant acted with a corrupt intent is relatively straightforward. Proving that President Trump acted with a corrupt intent, however, would be a daunting undertaking. As the Mueller Report lays out, there might have been a host of entirely legitimate reasons why the President did what he did.

The President had perfectly understandable reasons to be exasperated by the cloud hanging over his head during the pendency of this investigation, and for wishing it to come to a speedy conclusion. The investigation stemmed from a controversy that clearly represented a cloud over

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[11] See Mueller Report, Volume 2, pg. 7.

[12] Id. at 10.

[13] Indeed, Special Counsel Mueller acknowledged as much when he stated in his Report that "unlike cases in which a subject engages in obstruction of justice to cover up a crime, the evidence we obtained did not establish that the President was involved in an underlying crime related to Russian election interference. Although the obstruction statutes do not require proof of such a crime, the absence of that evidence affects the analysis of the President's intent and requires consideration of other possible motives for his conduct." Mueller Report, Volume 2, pg. 7.

his presidency. The investigation caused some members of the public to question the legitimacy of his election, because the allegations involved active participation by high-level people in his campaign in a conspiracy with a foreign government -- in this case, perhaps our greatest adversary -- to engage in illegal activities to "steal" the 2016 election from his opponent.

The investigation also clearly adversely affected his ability to govern. Accordingly, the President could, quite legitimately, have been concerned that the investigation was hampering his ability to govern. That problem might have been particularly acute in connection with the President's ability to engage in foreign relations, especially his dealings with Russia.[14] Plus, the manner in which the investigation was conducted, at least initially, might well have sown seeds of distrust between the President and the Intelligence Community that still appear to linger. After all, as Justice Stephen Breyer said in his concurring opinion in *Clinton v. Jones*, any "[i]nterference with a President's ability to carry out his public responsibilities is constitutionally equivalent to interference with the ability of the entirety of Congress, or the Judicial Branch, to carry out its public obligations."[15]

President Trump might well have concluded, and reasonably so, the following: first, that the investigation should be curtailed or even terminated because it was impeding his ability to do the job that the American people elected him to do, and second, that the investigation therefore was not in the best interests of the nation. Those considerations, rather than naked self-interest, might have prompted him to act in the manner described in the Mueller Report. Such an alternative, non-corrupt motive might also explain how and why President Trump conducted himself the way he did during the pendency of the investigation. It was therefore quite reasonable for Attorney General Barr to conclude that in the absence of clear proof of a corrupt intent on the part of the President, a prosecutable case of obstruction of justice, based solely on the facts, simply did not exist.

III. Special Counsel Mueller's theory of criminal liability is erroneous for two reasons: It lacks a "clear statement" from Congress to render a president liable for performing constitutionally-authorized actions, and it would interfere with the President's ability to perform his constitutional duties

There are other reasons to support General Barr's conclusion that a prosecutable case of obstruction of justice does not exist. Here, Special Counsel Mueller's legal theory is highly questionable and problematic in that it could have a chilling effect on the presidency. Clearly the biggest bone of contention between Attorney General Barr and Special Counsel Mueller is the latter's belief that a president could be charged with obstruction of justice for undertaking facially-valid, discretionary actions in the exercise of authority clearly vested in him under Article II of the Constitution, if he acts based on an improper motive.[16]

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[14] The Mueller Report is replete with statements from witnesses who said that the President was upset about the fact that the ongoing investigation was making it difficult for him to run the country and was particularly hurting his ability to address foreign relations issues, especially with Russia.

[15] Clinton v. Jones, 520 U.S. 681, 711 (1997)(Breyer, J., concurring).

[16] This is evident from the June 8, 2018 memorandum that William Barr sent to Deputy Attorney General Rod Rosenstein and Assistant Attorney General for the Office of Legal Counsel Steven Engel on "Mueller's

Adopting Mueller's theory would cause us to wade into perilous waters that most certainly could have a chilling effect on a president, preventing him from acting with the decisiveness, energy, and dispatch that Alexander Hamilton described in Federalist No. 70 as being both desirable and necessary in a Chief Executive. It might well result in a president hesitating before engaging in some aggressive or controversial action – such as appointing or removing a particular executive branch official, signing an executive order, or issuing a pardon to a former colleague[17] or political supporter[18] -- out of fear that his subjective intent and motivation might be questioned at some point in the future by a prosecutor -- perhaps a politically motivated one[19] -- undertaking a criminal investigation.[20]

For this reason, and "[o]ut of respect for the separation of powers and the unique constitutional position of the president," the Supreme Court in 1992 in *Franklin v. Massachusetts*

'Obstruction' Theory" as well as comments he has made since about not agreeing with some of Special Counsel Mueller's legal theories. See, e.g., Attorney General William P. Barr Delivers Remarks on the Release of the Report on the Investigation into Russian Interference in the 2016 Presidential Election, Dep't of Justice Press Release, Apr. 18, 2019 ("Although the deputy attorney general and I disagreed with some of the special counsel's legal theories and felt that some of the episodes examined did not amount to obstruction as a matter of law, we did not rely solely on that in making our decision. Instead, we accepted the special counsel's legal framework for purposes of our analysis and evaluated the evidence as presented by the special counsel in reaching our conclusion."), available at https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-release-report-investigation-russian (last visited on June 7, 2019).

[17] Consider President Ford's pardon of Richard Nixon or President George H.W. Bush's pardon of Caspar Weinberger and five others connected to the Iran-Contra Affair.

[18] Consider President Clinton's pardon of fugitive Marc Rich after his wife Denise made a generous donation to the Clinton Library and to Hillary Clinton's senatorial campaign.

[19] See, e.g., U.S. v. Stevens, 559 U.S. 460, 480 (2010) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.").

[20] The Supreme Court has recognized this danger in setting far less consequential than this one. For example, in Harlow v. Fitzgerald, 457 U.S. 800, 816-17 (1982), the Court observed in the context of a government official facing civil liability, that an inquiry into that official's subjective state of mind would be unduly disruptive to the performance of that official's duties. The Court stated:

> It now is clear that substantial costs attend the litigation of the subjective good faith of government officials. Not only are there the general costs of subjecting officials to the risks of trial -- distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service. There are special costs to "subjective" inquiries of this kind. ... In contrast with the thought processes accompanying "ministerial" tasks, the judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experiences, values, and emotions. These variables explain in part why questions of subjective intent so rarely can be decided by summary judgment. Yet they also frame a background in which there often is no clear end to the relevant evidence. Judicial inquiry into subjective motivation therefore may entail broad-ranging discovery and the deposing of numerous persons, including an official's professional colleagues. Inquiries of this kind can be peculiarly disruptive of effective government.

held that there must be "an express statement by Congress" before a generally worded statute -- such as the catchall obstruction of justice statute (18 U.S.C. § 1512(c)(2)) relied upon by the Special Counsel -- can be applied to the President if such application could possibly conflict with a president's constitutional prerogatives.[21] This principle has come to be known as the Clear Statement Rule. The canon of constitutional avoidance when it comes to statutory interpretation, whereby a court faced with two possible interpretations of a statute – one of which is clearly constitutional, with the other of questionable constitutionality – should generally apply the interpretation that avoids the hard constitutional question is also implicated here.[22]

In a 1974 opinion further delineating the parameters of the clear statement rule, OLC clarified: "This is not a situation like the bribery statute (18 U.S.C. 201), where from the nature of the offense charged, no one, however exalted his position, should safely feel that he is above the law." OLC elaborated upon this in a 1995 opinion in which it stated that applying the bribery statute to the president "raises no separation of powers questions were it to be applied to the President" because the Constitution "confers no power in the President to receive bribes." That opinion further explained that the Constitution specifically contemplates impeachment for "bribery," and "specifically forbids any increase in the President's compensation for his service while he is in office, which is what a bribe would function to do."

In his Report, the Special Counsel concluded, based on the reasoning of these OLC opinions, that the clear statement rule does not apply to the catchall obstruction of justice statute with respect to presidential actions, if those actions were undertaken with an improper motive, that is to say for the purpose of gaining some personal advantage in a manner that is inconsistent with his official duties.[23] As other notable scholars have also concluded,[24] I believe any such legal

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[21] Franklin v. Massachusetts, 505 U.S. 788, 801 (1992). See also Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges, 19 Op. O.L.C. 350 (1995)(recognizing that the clear statement rule protects the "usual constitutional balance" between the branches by "requir[ing] an express statement by Congress before assuming it intended" to impinge upon presidential constitutional authority).

[22] See, e.g., Bond v. United States, 134 S. Ct. 2077 (2014)(interpreting the Chemical Weapons Convention Implementation Act of 1998 so as to avoid deciding whether Congress could federalize a purely local crime through its authority under the Treaty Clause); Public Citizen v. United States Dep't of Justice, 491 U.S. 440 (1989)(applying the "cardinal principle" that statutes be interpreted to avoid serious constitutional questions and adding "we are loath to conclude that Congress intended to press ahead into dangerous constitutional thickets in the absence of firm evidence that it courted such perils."). Had the President been charged, the rule of lenity might also be implicated. See, e.g., United States v. Granderson, 511 U.S. 39, 54 (1994)("In these circumstances -- where text, structure, and history fail to establish that the Government's position is unambiguously correct – we apply the rule of lenity and resolve the ambiguity in [the defendant's] favor.").

[23] See Mueller Report, Volume 2, pg. 8 & pgs. 159-181.

[24] See, e.g., Jack Goldsmith, The Mueller Report's Weak Statutory Analysis, Lawfare, May 11, 2019, available at https://www.lawfareblog.com/mueller-reports-weak-statutory-interpretation-analysis (last visited on June 7, 2019); Jack Goldsmith, The Mueller Report's Weak Statutory Interpretation Analysis: Part II, Lawfare, May 23, 2019, available at https://www.lawfareblog.com/mueller-reports-weak-statutory-interpretation-analysis-part-ii (last visited on June 7, 2019); Josh Blackman, The Special Counsel's Constitutional Analysis: The Clear Statement Rule, Lawfare, Apr. 19, 2019, available at

theory is wrong. It is easy to disentangle acts such as paying a bribe, destroying evidence, and threatening witnesses – all facially criminal acts -- from legitimate exercises of presidential constitutional authority. After all, there is never a proper motive to engage in such conduct. The same cannot be said of obstruction of justice and many of the acts that were investigated by the Special Counsel.

One obvious problem with applying the obstruction of justice statute to a president is that the Constitution vests in him the responsibility to "take Care that the Law be faithfully executed ...."[25] That provision imposes upon him a duty that he must carry out. The Take Care Clause certainly contemplates that there are times when it would be entirely appropriate, if not necessary, for a president to involve himself in an ongoing investigation, including perhaps ending one and removing the officials who conducted it.[26]

Moreover, the Constitution and the public are harmed whenever a prosecutor investigating a president goes beyond facially illegitimate conduct, such as paying a bribe or threatening a witness. Some of the president's activities that were investigated by the Special Counsel – publicly (or privately) criticizing the fairness of an ongoing investigation, asking subordinates to publicly defend him and attack the credibility of the prosecutor[27], contemplating (or actually) removing an executive branch official, contemplating issuing a pardon – may have been undertaken for a mixed motive or an entirely pure motive. Deciding which is which – indeed, even probing into such matters -- would inevitably and inescapably, not just possibly or arguably, interfere with and limit the President's ability to serve the nation as he sees fit in the exercise his Article II powers, thereby raising profound separation of powers issues.

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https://www.lawfareblog.com/special-counsels-constitutional-analysis-clear-statement-rule (last visited on June 7, 2019).

[25] U.S. CONST. Art. II, § 3. See also U.S. CONST. Art. II, § 1, cl. 8 (prior to entering office, the President must take the following oath of office: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.").

[26] This could be the case when the President might derive some personal benefit from such an intervention. For example, there was speculation at the time that by pardoning six individuals connected with the Iran-Contra affair, thereby effectively terminating Independent Counsel Lawrence Walsh's investigation, President George H.W. Bush might have prevented some of those individuals from challenging his assertion that he was "out of the loop" whenever the matter was discussed in the White House. See, e.g., Robert Jackson and Ronald Ostrow, *Prosecutor accuses President of misconduct, claims Bush kept own notes of arms-for-hostages affair. Christmas Eve clemency scuttles six-year investigation.*, Los Angeles Times, December 25, 1992, available at https://www.latimes.com/archives/la-xpm-1992-12-25-mn-2472-story.html (last visited on June 7, 2019).

[27] Consider, for example, the attacks on the credibility of Independent Counsel Ken Starr by President Clinton and his subordinates. See, e.g., Jack Nelson, *Carville Resumes Campaign Against Starr*, L.A. Times, Dec. 11, 1996, available at https://www.latimes.com/archives/la-xpm-1996-12-11-mn-8074-story.html (last visited on June 7, 2019).

Conclusion

While it is certainly true that no man, including the President of the United States is above the law, it is equally true that the President occupies a unique position in our constitutional structure. Some laws apply differently to him and some don't apply at all, at least in the absence of a clear statement from Congress that a law should apply to him and, even then, not in instances in which the law impinges upon the exercise of the President's constitutional prerogatives.

Given the lack of clear evidence that the President acted with a corrupt intent, that many of the actions he undertook or contemplated undertaking were pursuant to powers clearly vested in him by Article II of the Constitution, the lack of a clear statement from Congress that the obstruction of justice statute that the Special Counsel relied upon applies to the President, and the inescapable danger that its application could interfere with the President's ability to carry out his duties, Attorney General Barr acted properly in concluding that a prosecutable case of obstruction of justice against the President did not exist.

I thank you for inviting me here to testify today, and I look forward to answering any questions you might have.

Chairman NADLER. Thank you very much.
Professor McQuade.

TESTIMONY OF BARBARA MCQUADE

Ms. MCQUADE. Thank you, Chairman Nadler, Ranking Member Collins, and distinguished members of this committee. I am honored to be here today, and thank you for the opportunity to talk with you about obstruction of justice.

I've read the special counsel's report, and, to me, the most significant finding in that report is that Russia interfered with our election in sweeping and systematic fashion. And through that lens, I will share two observations—first, about what happened and, second, about why that matters.

First, the conduct described in the report constitutes multiple crimes of obstruction of justice. It's supported by evidence of guilt beyond a reasonable doubt. And I'm confident that if anyone other than a sitting President committed this conduct that person would be charged with crimes.

Second, why does that matter? Well, the obstruction described in the report created a risk to our national security. It was designed to prevent investigators from learning all of the facts about an attack on our country by a hostile foreign adversary.

Let me explain each of those observations briefly.

First, what happened. The special counsel's report describes 10 episodes of potential obstruction of justice. And with regard to four of those episodes, the special counsel found substantial evidence for all three elements of obstruction of justice.

Those obstruction crimes include: requesting that White House Counsel Don McGahn remove Robert Mueller as special counsel; asking Don McGahn to falsely deny public reports about that order and to create a false document to support that lie. It includes reports of efforts to persuade Attorney General Jeff Sessions to reverse his recusal decision, which would've been unethical, and to publicly announce that the Russia investigation would focus on future elections only. It also talks about efforts to influence the testimony of Paul Manafort, a former campaign chairman.

Let me focus on just one of those incidents, and that's the incident where the report describes persistent efforts to curtail the special counsel's investigation by directing Attorney General Sessions to reverse his recusal decision and to limit the investigation to future elections.

President Trump asked various intermediaries, including Corey Lewandowski, who was at that point a private citizen, to convey a message to Mr. Sessions, but, ultimately, none of them did it. But for the acts of those associates, Mr. Trump would have limited the investigation to future elections. That would have prevented Mr. Mueller from learning the facts about Russian interference in the 2016 election—essential to our national security.

And although Mr. Mueller's investigation did not establish the crime of conspiracy against the Trump campaign, under Federal statutes, proof of underlying crime is not required to prove obstruction. And there's a very important reason for that. That's because it's the interference in the quest for the truth that the law prohibits.

And let's not forget that the investigation did establish sufficient facts to charge 37 defendants with crimes, including Russian intelligence officials. And that's despite the fact that some people, including the President, refused to talk to Mr. Mueller.

The report says that some people lied to the special counsel, some deleted communications, and some used encrypted applications to conceal their conversations. As the report says, given these gaps, the office cannot rule out the possibility that unavailable information would shed additional light. This body has the power to obtain additional information.

The report identified possible motives, including personal embarrassment, the possibility that his conduct amounted to crimes, and the legitimacy of his election.

And, second, why it matters. If Mr. Trump had been successful in limiting the scope of the investigation to future elections, that would've harmed our national security by shielding Russia's conduct in attacking the 2016 election. But for the conduct of other individuals, Mr. Trump would have thwarted Mr. Mueller's efforts. By seeking to curtail the investigation, President Trump committed an act that threatened the national security of this country.

As Robert Mueller concluded in his report, he reiterated that the central allegation of our indictments were that multiple and systematic efforts to interfere with our election occurred. That allegation deserves the attention of every American.

I hope to answer your questions to give that allegation the attention that it deserves. Thank you.

[The statement of Ms. McQuade follows:]

"Lessons from the Mueller Report"

Hearing Before the House Committee on the Judiciary
Monday, June 10, 2019

Statement for the Record of Barbara McQuade
Former United States Attorney, Eastern District of Michigan
Professor from Practice, University of Michigan Law School

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Chairman Nadler, Ranking Member Collins, and distinguished members of the Committee: Thank you for inviting me to speak with you today about lessons from the Mueller Report regarding obstruction of justice.

I have served as a professor from practice at the University of Michigan Law School for the past two years, focusing on criminal and national security law. Before joining the law school, I had the privilege of serving the American people at the United States Attorney's Office for the Eastern District of Michigan for 19 years, first as a line assistant, then as Deputy Chief of the National Security Unit, and later as U.S. Attorney. I have handled and supervised cases involving national security and obstruction of justice, and I hope that my experience will be helpful to the committee.

I understand that we are bound by certain rules on decorum that prevent us from discussing allegations of misconduct against the president. While those rules may create challenges in providing complete responses to your questions, I will do my best to comply with those rules when answering.

Overview of Testimony

I have reviewed the Report on the Investigation into Russian Interference in the 2016 President Election ("Report"). The report's most important finding is that Russia interfered with our election in "sweeping and systematic fashion." Report, Vol. I, p. 1. It is important to view the president's conduct with that conclusion in mind.

Through that lens, I will share three observations about the report.

First, the conduct described in the report constitutes multiple crimes of obstruction of justice.

Second, the obstruction described in the report posed a risk to our national security because it was designed to prevent investigators from learning all of the facts about an attack on our country by a hostile foreign adversary.

Third, when a public official's misconduct is known to a foreign adversary, that knowledge leaves the official vulnerable to efforts to leverage his or her misconduct to its advantage, which compromises his or her ability to act in the best interests of the country.

Obstruction of Justice Occurred

First, I will explain my observations about obstruction of justice. As part of his mandate, Robert Mueller was asked to investigate obstruction of justice in connection with his investigation of Russian election interference. 28 C.F.R. § 600.4

Obstruction of Justice is a Serious Offense

Obstruction of justice cases are among the most serious matters that prosecutors investigate. As Mr. Mueller stated in his press briefing, "When a subject of an investigation obstructs that investigation or lies to investigators, it strikes at the core of the government's effort to find the truth and hold wrongdoers accountable." For this reason, obstruction of justice should not be dismissed as a mere "process" crime, with the suggestion that it is somehow less egregious than other offenses. In fact, it is more serious than many other crimes because it conceals the truth. For our system to bring offenders to justice, it is essential that witnesses are accessible to investigators, that they tell investigators the truth, and that they provide documents that are complete and accurate. Obstructive conduct is particularly harmful when the matter under investigation threatens our national security.

Obstructive Conduct in the Mueller Report

The crime of obstruction of justice includes *attempts* to obstruct, and does not require proof of an underlying crime. 18 U.S.C. § 1512(c)(2). In this case, of course, underlying charges were filed against 37 defendants, including Russian intelligence officials, and so efforts to obstruct Mr. Mueller's investigation risked thwarting his ability to understand the full scope of the attack.

The special counsel's report describes ten episodes of potential obstruction of justice. Proving obstruction of justice requires establishing three essential elements: an obstructive act, a connection to an official proceeding, and a corrupt intent. With regard to four of these episodes, the special counsel found "substantial evidence" for all three elements of obstruction of justice. Any one of these acts is enough to charge a crime of obstruction of justice against an ordinary person other than the president, but it is important to view the acts under the totality of the circumstances to provide appropriate context and to establish a corrupt intent.

First, the evidence shows a request to White House Counsel Don McGahn to remove Mr. Mueller as special counsel. Second, the evidence also shows a request to falsely deny public reports about that order and to create a false document to support the lie. Third, the evidence shows efforts to persuade Attorney General Jeff Sessions to reverse his recusal decision, and to publicly announce that the Russia investigation would focus on future elections only. Fourth, the evidence shows efforts to influence the testimony of Paul Manafort, another former campaign chairman.

The essential elements of the obstruction statute must be established in a criminal prosecution, which Mr. Mueller believed was not an option with regard to President Trump. Report, Vol. II, pp 1-2. Mr. Mueller wrote that Justice Department policy precluded him from charging a sitting president with a crime. *Id.* at 1. He further wrote that because he could not charge a sitting president, he believed that fairness precluded him from even accusing a sitting

president of a crime because he or she would lack the opportunity to clear his name in court. *Id.* at 2. Mr. Mueller further wrote that an accusation would "preempt constitutional processes for addressing presidential misconduct." *Id.* at 1. (citing U.S. Const. Art., 1 § 2, cl. 5; § 3, cl. 6; *cf.* OLC Op. at 257-258 (discussing relationship between impeachment and criminal prosecution of a sitting president)). Mr. Mueller's treatment of this issue is in contrast with his treatment of the conspiracy offense, for which he concluded that the investigation did not establish the crime of conspiracy. As Mr. Mueller wrote, "While this report does not conclude that the President omitted a crime it also does not exonerate him." Id. at 2. Instead, Mr. Mueller sought "to preserve the evidence when memories were fresh and documentary materials were available" because other defendants could be charged, and a president may be charged after he leaves office.

Let me focus on one of those incidents. The report describes President Trump's persistent efforts to curtail the special counsel's investigation by directing Attorney General Sessions to reverse his recusal decision and to limit the investigation to future elections. Report, Vol. II, pp 90-98. According to the report, in the summer of 2017, President Trump went outside of official channels to his former campaign manager Corey Lewandowski, a private citizen, and asked him to convey his directive to Mr. Sessions to limit the investigation to future elections. After a failed attempt to meet with Mr. Sessions, Mr. Lewandowski asked another White House aide, Rick Dearborn, to pass along the message to Mr. Sessions. Mr. Dearborn did not convey the message. A month later, Mr. Trump asked Mr. Lewandowski whether he had delivered the message, and said that if Mr. Sessions would not meet, that Mr. Lewandowski should tell him he was fired. Mr. Trump publicly criticized Mr. Sessions for his recusal, and directed Chief of Staff Reince Priebus to force Mr. Sessions to resign, but Mr. Priebus did not comply.

But for the acts of his aides, Mr. Trump would have limited the investigation to future elections. Mr. Mueller identified "substantial evidence" that President Trump's conduct would have the natural and probable effect of impeding the grand jury proceeding and was intended "to prevent further investigative scrutiny of the President's and his campaign's conduct." *Id.*, at 97.

Although Mr. Mueller's investigation did not establish the crime of conspiracy as a technical matter under federal statutes, the statute does not require proof of any underlying crime, which would have the unwanted result of permitting successful obstructors to avoid accountability. Moreover, Mr. Mueller wrote that "[a] statement that the investigation did not establish particular facts does not mean that there was no evidence of those facts." In fact, Mr. Mueller found that "the Russian government perceived that it would benefit from a Trump presidency and worked to secure that outcome, and that the [Trump] Campaign expected that it would benefit electorally from information stolen and released through Russian efforts." Mr. Mueller further wrote that "the investigation identified numerous links between individuals with ties to the Russian government and individuals associated with the Trump Campaign." These links provided an incentive for Mr. Trump to thwart the investigation.

The report also describes evidence of another motive to conceal Russian involvement in the election as the perceived legitimacy of the outcome of the election. The report states: "Several advisors recalled that the President-Elect viewed stories about his Russian connections,

the Russia investigations, and the intelligence community assessment of Russian interference as a threat to the legitimacy of his electoral victory."

Regardless of motive, the conduct described in the report was an attempt to interfere with Mr. Mueller's investigation.

Hindering the Investigation of the Election Attack Harms National Security

Second, the obstructive conduct here is intertwined with Russia's election interference, and threatens our national security. Mr. Trump's attempt to limit the scope of the investigation to future elections, had it been successful, would have shielded Russia's conduct in attacking the 2016 election from the investigation, a probe that yielded charges against more than two dozen Russian individuals and entities, and exposed what Mr. Mueller referred to as "sweeping and systematic" election interference. Report, Vol. 1, p. 1. Mr. Mueller's work can be shared with the intelligence community to protect our country from future attacks. But for the intervention of other individuals, Mr. Trump would have thwarted Mr. Mueller's efforts to gain valuable intelligence by limiting the investigation into Russian election interference.

While Mr. Mueller's investigation did not establish the crime of conspiracy, he noted that his investigation was harmed by witnesses who lied, deleted communications, used encrypted message applications and invoked their Fifth Amendment privilege not to incriminate themselves. His inability to establish a case of conspiracy does not mean that the described conduct reflects the kind of loyalty to American interests we should expect.

By seeking to end or curtail the investigation, President Trump attempted to limit our country's understanding of how Russia attacked our election, which would also diminish our ability to detect and defend against future threats.

Obstructive Conduct Itself Creates a National Security Risk

Third, in addition to diminishing Mr. Mueller's ability to expose the truth about Russia's attack on our election, a cover-up itself threatens national security because it compromises a President's ability to act free from undue influence. Knowledge about unlawful or unflattering facts provides leverage that could allow a foreign adversary to pressure a government official to accede to its will, explicitly or implicitly.

For example, Mr. Mueller's report refers to admitted lies to Congress by Michael Cohen, President Trump's former attorney. Mr. Cohen admitted that he lied to Congress when he testified that negotiations to build a Trump Tower in Moscow ended in January 2016, when, in fact, they continued until June of 2016. Report, Vol. I, pp 74-75. That fact would have been known to Russians. The discrepancy between President Trump's public statements and the truth could be used to compromise the President's ability to act free from foreign influence to the detriment of our national security.

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Mr. Mueller concluded his public remarks by "reiterating the central allegation of our indictments – that there were multiple, systematic efforts to interfere in our election. That allegation deserves the attention of every American."

I hope to answer your questions to give that allegation the attention that it deserves.

Chairman NADLER. Thank you very much.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

Mr. Dean, as you are no doubt aware, the committee subpoenaed former White House Counsel Don McGahn to produce White House documents shared with him and his counsel over the course of the special counsel's investigation and to testify before the committee on May 21.

At the direction of the White House, Mr. McGahn has not produced any documents. Additionally, the White House, while it has not formally invoked executive privilege over any specific information Mr. McGhan's testimony may cover, has nonetheless instructed him not to appear at all, merely because it may implicate the privilege.

Do you agree with the White House, or does Mr. McGahn still have a legal obligation to appear before the committee? And if so, why?

Mr. DEAN. I have also read the OLC opinion of May 20 that says that a White House employee or a former White House employee has total immunity from testifying or appearing before Congress. That pushes the outer limit further than I have ever seen it pushed.

And while they cite me in that memo, for two memos I received, both of those instances, the witness did appear. The Flanigan memo, for example, it was arranged that he would come to Congress. In other instances, when Henry Kissinger was asked to appear, we found a middle ground to have a meeting in Blair House. So there are solutions to this if the parties want to cooperate.

So I think this is a smokescreen at this point, and I hope that the committee will pierce it, because I think it's important.

Chairman NADLER. Thank you.

Professor McQuade, on page 1 of Volume II of the Mueller report, the special counsel described the legal and policy considerations that guided his investigation. The special counsel begins by noting that his team determined not to make a traditional prosecutorial judgement and that his office accepted the Department of Justice OLC conclusion, which states that an indictment of a sitting President would, quote, impermissibly undermine the capacity of the executive branch to perform its constitutionally assigned functions, close quote.

The special counsel, however, made clear, as well, that a Federal indictment of a sitting President would also potentially preempt constitutional processes for addressing Presidential misconduct and specifically referenced Congress' Article I powers.

What do you make of Special Counsel Mueller's reference here to Congress' separate authority?

Ms. MCQUADE. I think that what Mr. Mueller was doing there was being incredibly deferential. Because he was bound by the Office of Legal Counsel opinion that said he could not indict a sitting President, he thought it would be improper to even make an accusation that would disparage President Trump, because he did not want to step on the powers of Congress, which alone has the power of impeachment.

Chairman NADLER. So do you agree with the special counsel that Congress has an independent duty to investigate possible misconduct of malfeasance by executive branch officials, including the President, even if that's a do-over of the Mueller report?

Ms. MCQUADE. Yes, I do. And I don't know that I would even call it a do-over. I think it's a separate inquiry that this body has a responsibility to conduct.

Chairman NADLER. Thank you.

Now, returning to the Mueller report, the special counsel specifically notes that he pursued his obstruction-of-justice investigation in order to preserve evidence and protect the integrity of future investigations.

The special counsel's report states, quote, while the OLC opinion concludes that a sitting President may not be prosecuted, it recognizes that a criminal investigation during the President's term is permissible. The OLC opinion also recognizes that a President does not have immunity after he leaves office. And if individuals other than the President committed an obstruction offense, they may be prosecuted at this time.

Given those considerations, the facts known to us, and the strong public interest in safeguarding the integrity of the critical justice system, we conducted a thorough, factual investigation in order to preserve the evidence when memories are fresh and documentary materials were available, close quote.

Now, Professor Vance, what is your reaction to the special counsel's inclusion of this language in the report?

Ms. VANCE. This language, I think, explains what we all know to be true. There has been a little bit of complaint that Special Counsel Mueller, once he realized he couldn't indict a sitting President, should not have continued to investigate. This language indicates that that's not the case. It was important to investigate while memories were fresh and evidence could be obtained. And that's because a President is not immune for all time from prosecution, only while he's in office.

So Mueller could've been investigating for future prosecutors when the President was no longer in office. He could've been investigating information about other people, other than the President, who might have participated in crimes. There were abundant reasons for this investigation to continue, this investigation into the criminal justice implications of the President's conduct.

Chairman NADLER. Thank you.

Finally, Ms. McQuade, the Mueller report also acknowledges that Congress has the authority to prohibit a President's corrupt use of his authority in order to protect the integrity of the administration of justice. The special counsel further observed that, under applicable Supreme Court precedent, the Constitution does not categorically and permanently immunize a President from obstructing justice through the use of his Article II powers. The Separation of Powers Doctrine authorizes Congress to protect official proceedings, including those of courts and grand juries, from corrupt obstructive acts regardless of their source, unquote.

As such, the special counsel concluded that, quote, Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office in accordance with our constitutional system of

checks and balances and the principle that no person is above the law.

Do you agree with the special counsel's conclusion that the Constitution permits Congress to prohibit a President's corrupt act exercised of the powers of his or her office? And if so, why?

Ms. MCQUADE. Yes, Chairman. There is an extensive section in Robert Mueller's report that talks about that. It addresses that theory that was first advanced by William Barr in the 19-page memo that he submitted to Congress last summer taking the view that Congress cannot limit the President because of separation of powers.

But I think the ultimate conclusion is that the President does not have just the power to execute the laws but the Constitution requires that he faithfully execute the laws. And that means that he cannot act corruptly. He must always act in the best interests of the country.

And so, yes, I do agree on that theory.

Chairman NADLER. Thank you.

My time has expired. I'll now recognize the ranking member, the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Interesting last comment there. We may get back to that, this issue of faithful and how that actually turns out.

But I do want to go back to something that you and Professor Vance have both talked about, and it's this issue of, did Mueller investigation—were they going to charge or not charge based on OLC opinions. It's an interesting concept, especially when you go back to not—it was the final charge for Mueller, but them to Bill Barr himself, when actually giving the report, the ultimate charging authority here.

And it said in the letter, the first letter that came from the Attorney General, it said, after reviewing the special counsel's final report on these issues, consulting with department officials, including Office of Legal Counsel, and applying the principles of Federal prosecution that guide our charging decisions, the Deputy Attorney General, Rod Rosenstein, and I have concluded that the evidence developed during the special counsel investigation is not sufficient to establish that the President committed an obstruction of justice offense. And our determination was made without regard to or based upon any limitations based on the considerations surrounding the indictment.

Interesting, this has been discussed later on, because it became the—after the discussion, there was a joint statement put out by the Attorney General's Office and by the Special Counsel's Office that said this: The Attorney General has previously stated the special counsel repeatedly affirmed that he was not saying that but for the OLC opinion he would've found the President obstructed justice. The special counsel report and his statement today make clear that the office concluded that it would not reach a determination one way or the other about whether the President committed a crime. And there's no conflict between these statements.

So I think the interesting part that is coming along here is this discussion on the fact that it does appear, and you can take one part saying he was bound by this, and you can—but the Attorney

General made it very clear that when he looked at it—and it was up to him if he wanted to move forward with charges. He chose not to charge because Mueller had gave it to him, and took into account the special counsel's determination, and then later on with the special counsel himself saying that he wasn't going to charge either way and was not bound by this opinion.

My question becomes, though: You've got great opinions, both of you, on these issues of obstruction, but, again, as I said before in the start of this, the main priority—and you both mentioned this—was the Russian interference in our elections.

Ms. McQuade, I have a quote, and it was a tweet from you that says: Hey, Mueller, look over here. @Maddow has found the collusion. Follow the sanctions. If this whole cable news doesn't work out for you, Rachel, you have a real future in the FBI.

This was December 1, 2018.

I have a question. Yes or no, do you and Rachel Maddow have evidence of collusion that the special counsel didn't have?

Ms. MCQUADE. Well, you know, "collusion" is an interesting term, Congressman Collins, and it's a term that Robert Mueller in his report says I didn't use, because it's kind of confusing. And so, ultimately, after reading his report, what he says is: I wasn't able to establish the crime of conspiracy.

But he did document numerous contacts between Russia and the Trump campaign. In fact, right at the very beginning of the report, at page 1——

Mr. COLLINS. And, Ms. McQuade, I want to jump in here, because I agree with—and you can report the report. You just made an interesting comment, though, in which many of us have said about this issue of collusion, which there was not.

But I've had many, even Members of Congress and others continue this—that there was collusion in plain sight; the President's committed a crime. And when you just stated the original process here—but my question is—I'm assuming it's a "no"—you don't have any more information or evidence than we have here.

John Dean, just——

Ms. MCQUADE. I'm sorry, is that a question? May I answer?

Mr. COLLINS. No, that was—I've got a minute and 57. I'm bound by the 5-minute——

Ms. MCQUADE. Refer to page 1 of the report.

Mr. COLLINS. And I've read it. Thanks.

Mr. Dean, interesting, you talked about the issue of pardon. But, actually, in the Mueller report itself, when it talked about the pardon—and you discussed it where Nixon said he shouldn't have. The actual quote on page 122 of this was "I don't want to talk about pardons for Flynn yet." In fact, the President actually said "I don't want"—he never offered a pardon. He didn't want to talk about it.

So, again, here's our issue here. And you made the best of all of the concerning of this right now when you started off saying "I am not a fact witness." Neither are others. We're simply here conjecturing opinions in law school, and for those of us writing notes feverishly, I feel like, Professor, we're back in law school again.

But at the end of the day, where we're heading with this is—the concern that I have is that we have—going back, and the discussion was here for later on, what does this committee have that Rob-

ert Mueller didn't have? What does this committee have? When you go through the, literally, 19 lawyers, 40 FBI agents, 2,800 subpoenas—we barely can get through most of our workweek without stopping up.

So I think the question and concern for most of here is, this not a redo, as the chairman—it is a redo from a less—weaker position and simply goes back to what has always been said here: This is a political consideration, not a criminal, because we're not an investigative—there's plenty more that I would like to have answered here. We just, unfortunately, are bound by our times on this.

And, with that, I'll have to yield back to the chairman.

Mr. DEAN. Mr. Chairman, may I——

Chairman NADLER. The gentleman's time has expired.

The witness may answer the question.

Mr. DEAN. Yeah, the question was addressed to me. And I think that this committee does have a role, and it is adding something that the special counsel could not, and that's public education.

This report has not been widely read in the United States. It's not even been widely read in the Congress, from some of my conversations. But I think it's a very important function that the committee is serving by bringing these matters to public attention.

Mr. COLLINS. I appreciate that and for the educational purposes. I really meant it more as a statement and not a question.

Chairman NADLER. The gentleman's time has now expired.

The gentlelady from California, Ms. Lofgren, is recognized for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

On May 17, 2017, Deputy Attorney General Rosenstein appointed the special counsel. And on page 8 of Volume II of the report, it states, and I quote: In the days following the special counsel's appointment, the President repeatedly told advisors, including Priebus, Bannon, and McGahn, that Special Counsel Mueller had conflicts of interest.

On page 81, the report states, and again I quote: Bannon recalled telling the President that the reported conflicts were ridiculous and that none of them was real or could come close to justifying precluding Mueller from serving as special counsel.

On May 23, the Justice Department cleared the special counsel of any conflicts, and on page 81 of Volume II, it describes the President's reaction, quote: The President complained about the asserted conflicts and prodded McGahn to reach out to Rosenstein about the issue. McGahn said he responded that he could not make such a call and the President should instead consult his personal lawyer because it was not a White House issue.

Mr. Dean, you recalled that you were here last July 11, 1974. I was here, too, working for my predecessor, Don Edwards, who was a member of the Judiciary at this time.

You have extensive experience as the counsel for the White House. Understanding the role of White House counsel, why would McGahn refer the President to private counsel?

Mr. DEAN. Because what's happened since my day in the White House is, the American Bar Association developed a rule, Rule 1.13, which makes it very clear in representation of an organization that the client are not the constituents of the organization or the

person—or who runs the organization or people who run the organization; it is the organization.

As a result, Mr. McGahn represents not Donald Trump, but he represents the Office of the President. So he has a very different client.

He also, apparently, from press reports, has advised the President that he has no attorney-client privilege. So that's why I—I would assume is the reason he referred the President to outside counsel to deal with these issues.

Ms. LOFGREN. Thank you.

The report goes on to cite contemporaneous notes taken by Mr. McGahn on May 23. On pages 81 and 82 of Volume II, it says, quote: McGahn advised that the President could discuss the issue with his personal attorney, but it would look like still trying to meddle in the investigation, and knocking out Mueller would be another fact used to claim obstruction of justice.

Professor Vance, what is your reaction to this exchange between the President and the White House counsel?

Ms. VANCE. This entire set of facts, Congresswoman, is very troubling. Because remember where we are at this point in time. We have a special counsel who's just been appointed to investigate Russian interference with the election. And now, suddenly, we have a President who's looking for reasons to remove him.

And the reason that the President lands on is, well, this special counsel have has some conflicts. He shouldn't be permitted to run an investigation into me. He engaged in some representation with some other lawyers who represented me. We once had a squabble about a golf course. There were a couple of issues that the President raised. And those issues were examined by the Justice Department, and the Justice Department cleared Special Counsel Mueller. So there has never been, legally, a conflict with Special Counsel Mueller's participation in this case.

But the President persisted here. And as you have discussed with Mr. Dean, that was referred on to the President as a matter he should take up his personal lawyer, not to continue discussing with the White House counsel.

And this repeated fallback by the President to the notion that he should be able to somehow conflict the special counsel out of his job was receiving strong pushback. So the President's continued persistence here, at least in my judgment, forms one of the acts of obstruction, ultimately resulting in the President taking affirmative steps to have Special Counsel Mueller fired.

But this entire colloquy that you refer to is very instructive on the issue of the President's intent at this point in time.

Ms. LOFGREN. Thank you, Professor.

Professor McQuade, do you see it similarly? What's your reaction to this?

Ms. MCQUADE. It is. And I think one of the things that's important, I know the report is long at 448 pages, but it really is important to read the whole report. And I would urge everyone here to do so if they have not yet had an opportunity, and members of the public. Because even though only a handful of the obstructive acts were found to have met each and every element of obstruction of

justice, I think it's really important to see the whole context of behavior to understand the significance of those events.

You know, if this were a criminal case in court, a jury would be instructed to look at the totality of the circumstances so that they can have a full understanding of what's going on. And it seemed that what's going on here, looking at the totality of the circumstances, is that President Trump felt threatened by Robert Mueller. He felt threatened by him, even though there was no ultimate finding of a crime of conspiracy. At the time the investigation was going on, President Trump didn't know that was going to be the outcome.

In fact, he was aware of numerous contacts with Russia that may be exposed, the Trump Tower meeting with Russians and his family members. There was also the matter of Michael Cohen's payments to a woman to buy her silence before the election. All of those things could have been things that motivated President Trump.

Let's not forget that one of the things that motivated Bill Clinton was covering up an extramarital affair. And so there are things other than the crime that the investigator is looking at that could motivate a person to try to end an investigation. And under the law, they are equally prohibited.

Ms. LOFGREN. My time has expired.

Chairman NADLER. I thank the gentlelady.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Dean, to the best of my knowledge, I don't think that we've ever met. I'm one of 435 Members of the House. There are a lot of us, but only one of you, and you're pretty famous. Let me take you back a ways.

Back in 1972, I was a freshman in college, and I voted for President for the first time. I'd have been 19 years old. I voted for Richard Nixon, principally because I thought he was improving relations with Russia and with China, and I thought that was a good thing.

Well, the next year, 1973, in June, June 22nd, to be exact, I married my high school sweetheart. Next week, we'll have been married 46 years now. And on our honeymoon in Gatlinburg, Tennessee, and then in Mammoth Cave, Kentucky, among other things that I remember, I remember watching you testify before Congress about the President that I had voted for and about some very bad things that he had done.

The next year, of course, that President resigned in disgrace and was replaced by Gerald Ford. A lot of my friends, people my age at the time, were really turned off from politics, thought they were a bunch of crooks, why would anybody ever want to be involved in politics. It had just the opposite effect on me. I thought we needed people involved in politics for the right reason, they want to help their community or the country.

And so I decided that some day I was going to get involved in politics and—I voted for, a couple years later, '76, I voted for Jimmy Carter, by the way, for President, because I thought it was wrong that Ford had been pardoned—had pardoned Nixon, figuring that there had been some sort of crooked deal that went on there.

So, anyway, a couple years later, I did get involved in politics. And I ran as an independent for Cincinnati City Council. I lost. Then 2 years later, I ran as a Republican, and this time I lost again. So, finally, I did get elected to council the next time, served for 5 years there, served for 5 years as a county commission, and then lo and behold, back in 1994, in the Republican revolution, I got elected to Congress and got appointed to this committee that I wanted to be on.

So 25 years after watching you on television, relative to Nixon and Watergate, I was a member of the Judiciary Committee impeaching another President, this time William Jefferson Clinton. And I'm one of only two Members in the House who were actually House impeachment managers in the Senate trial. Jim Sensenbrenner was the other.

Now it's 20 years after that, and it's been alleged that another President did something wrong, that he allegedly colluded with the Russians to win an election.

I thought the responsible thing to do was to reserve my judgment until the special counsel, this time Robert Mueller—it was an independent counsel back under Clinton—until the special counsel this time completed his report on the matter. He did, and he found no collusion. And he sort of punted on obstruction of justice, but the Attorney General determined no obstruction of justice.

So, Mr. Dean, my question to you is this: Rather than reserve your judgment until the Mueller report came out, like I did, you were an outspoken critic of President Trump, and you alleged publicly on more than one occasion, even before the Mueller report came out, that you believed President Trump had colluded with the Russians. Isn't that true?

Mr. DEAN. I don't think I quite said collusion. I think there is evidence, incidentally, in the report, of collusion. There have been a number of well done articles that draw on the different contacts between the Trump people and the Russians and make a fairly strong case for collusion.

Mr. CHABOT. I think——

Mr. DEAN. I'd just like to correct you on one fact, that you couldn't have, in 1971, have been attracted to Nixon because of China, because he hadn't gone to China yet.

Mr. CHABOT. I voted in '72.

Mr. DEAN. Right. By '72, it was in the—during the '72——

Mr. CHABOT. Yeah.

Mr. DEAN [continuing]. Campaign.

Mr. CHABOT. Right. That's what I mean, yes.

Mr. Malcolm, let me go to you. It's my understanding that it's your view that President Trump neither colluded with the Russians nor obstructed justice. Is that correct?

Mr. MALCOLM. It's Special Counsel Mueller's conclusion on the former. And then on the latter, I don't think as a legal matter, under the statute that Mueller relied upon, he could be convicted of obstruction of justice. And I thought the determination, based on the facts, was an eminently reasonable one that he did not engage in obstruction of justice.

Mr. CHABOT. Okay. And real quickly, when Attorney General Barr announced his determination on alleged obstruction of justice, was he within the scope of his authority to do so?

Mr. MALCOLM. It was within the scope of his authority to do whatever he wanted. I thought that the regulations say that he was supposed to make a prosecution or declination decision, which he failed to do, but, you know, he was given the authority to investigate these matters and he did what he did in his report.

Mr. CHABOT. Thank you very much.

My time has expired, Mr. Chairman.

Chairman NADLER. Thank you.

The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. As I hold this book up, all that we say refers to this roadmap. On June 13, 2017, the Acting Attorney General testified before Congress there was no good cause to remove the special counsel. On June 14th, 2017, the President issued a press statement stating he had no intention of firing Mueller. However, on page 90 of Volume II of this report, the report says, quote, but the next day the media reported that the President was under investigation for obstruction of justice, and the special counsel was interviewing witnesses about events related to possible obstruction, spurring the President to write critical tweets about the special counsel's investigation. The President called McGahn at home that night and then called him on Saturday from Camp David.

Pages 85 to 87 of Volume II provide more details on the Saturday call between the President and the White House counsel. Page 85 says on Saturday, June 17th, 2017, the President called McGahn and directed him to have the special counsel removed. McGahn was at home and the President was at Camp David. In interviews with this office, McGahn recalled that the President called him at home twice, and on both occasions, directed him to call Rosenstein and say that Mueller had conflicts that precluded him from serving as special counsel.

Page 85 provides further detail about the first call. Quote, on the first call McGahn recalled that the President said something like, you gotta do this, you gotta call Rod. McGahn said he told the President that he would see what he could do. McGahn was perturbed by the call and did not intend to act on the request.

Mr. Dean, speaking as a former White House counsel, why would that call from the President perturb McGahn?

Mr. DEAN. Well, I think Mr.—I think Mr. McGahn has stated that he was very aware that firing the special counsel could provoke an equivalent to the Nixon Saturday Night Massacre, which while he wasn't old enough to have remembered it personally, he'd certainly read about it and knew the negative consequences that had flowed from it. And so he stepped away from it and didn't want any part of it.

Ms. JACKSON LEE. Page 86 of Volume II of the report describes the second call. Quote, when the President called McGahn a second time to follow up on the order to call the Department of Justice, McGahn recalled that the President was more direct, saying something like, call Rod, tell Rod that Mueller has conflicts and can't be the special counsel. More direct. McGahn recalled the President saying, Mueller has to go, and, call me back when you do it.

McGahn understood the President to be saying that the special counsel had to be removed by Rosenstein.

What do you believe—or what is your reaction to this exchange, and would you find such behavior concerning, Professor Vance and then Professor McQuade?

Ms. VANCE. Yes, this conduct to me seems to have all the elements prosecutors would need to have to successfully charge obstruction of justice. There's an obstructive act, the effort to go ahead and have the special counsel fired. There's a nexus to an investigation. At this point, the President is aware that investigation is ongoing. And there appears to be a corrupt motive as well curtailing the special counsel's investigation. So this entire series of conversations and conduct is deeply troubling.

Ms. JACKSON LEE. Thank you.

Professor McQuade.

Ms. MCQUADE. Yes, Congresswoman, I would agree with that, in fact, it prompted Don McGahn to believe he had to resign because he could not participate in something that would be akin to the Saturday Night Massacre in the firing of Robert Mueller. He understood the significance of it, the consequences, and that it would amount to a crime of obstruction of justice.

And this idea that Robert Mueller was in any way conflicted really was frivolous. As officials advised him, it was based on the fact that President Trump said he interviewed for the FBI job and didn't get it. That's not quite right. He came in and provided advice to the White House about what to look for in the next FBI Director. And the squabble about a golf club membership was actually Robert Mueller said, I work so hard that I never have time to play golf, could I have a refund, I'm going to resign from the club. And the Trump Organization said no. That was the conflict of interest.

Ms. JACKSON LEE. Page 78 of the report said McGahn did not carry out the instruction for fear of being seen as triggering another Saturday Night Massacre and instead prepared to resign.

Page 85 and 86 provide a bit more context to McGahn's state of mind after receiving these phone calls. Quote, McGahn, once concerned about having any role in asking the Acting Attorney General to fire the special counsel, because he had grown up in the Reagan era and wanted to be more like Judge Robert Bork, and not Saturday Night Massacre Bork, McGahn considered the President's request to be an inflection point, and he wanted to hit the brakes.

Very quickly, Mr. Dean, you mentioned it before, what was the Saturday Night Massacre?

Mr. DEAN. I'm sorry, I missed——

Ms. JACKSON LEE. What was the Saturday Night Massacre?

Mr. DEAN. Saturday Night Massacre occurred in October of 1973, when Richard Nixon removed or fired Archibald Cox as the special counsel—the Watergate special prosecutor, because he exceeded what Nixon thought was his authority to demand tapes, the secret Nixon recordings. He had told him that they would offer them to the—a member of the Senate, John Stennis, who happened to have a very bad hearing problem, to validate the White House-prepared transcripts, and Special Counsel Cox rejected it.

And Nixon asked the Attorney General to fire him, Mr. Richardson, who refused and resigned. He asked, in turn, Mr. Ruckels-

haus, the Deputy Attorney General, to fire Cox. He too refused and resigned. It went to the third person in line of authority in the Department of Justice, to Mr. Bork, who did carry out the order.

Ms. JACKSON LEE. Thank you.

Chairman NADLER. Thank you. The gentlelady's time has expired.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman.

It's unusual to have the majority fail to properly give the basis for expertise of one of its own witnesses, but, Mr. Dean, you've got a lot more qualifications in this area than they actually provided in the introduction.

Back when The New York Times was more accurate, they reported that in your case, John Scirica, the judge, read the formal charges regarding the conspiracy to thwart the investigation, and he read as follows, that you were suborning perjury, giving false statements, and concealing evidence in the trial before Judge Scirica last winter. Of the men arrested in the break-in, offering clemency to the defendants, paying to keep the arrested men silent, asking the Federal Bureau of Investigation for information, attempting to get the CIA to provide money for the payments.

In furtherance of the conspiracy, Judge Scirica continued reading, Dean had committed six overt—specific overt acts. On or about June 27, '72, he directed G. Gordon Liddy to tell Howard Hunt to leave the United States. He asked the General Vernon Walters, the Deputy Director of the CIA, whether the CIA could use covert funds to pay the bail and salary to those involved in the Watergate break-in. He had asked the President's former private attorney, Herbert Kalmbach, to raise funds with which to make the payments to Watergate defendants. He had met with Jeb Stewart Magruder on the campaign staff to help Magruder prepare false, deceptive, and misleading testimony to give the grand jury. He had asked John Caulfield to offer executive clemency to James McCord, another of the original defendants. And he had asked L. Patrick Gray, former Acting Director of the FBI, for reports of information gained in the investigation break-in.

We've heard different reports from different people involved. Magruder ended up saying, after different versions, that you're the one that ordered the break-in of the Watergate headquarters. And I see you shaking your head, but did you ever order or convey and order the break-in to the Democratic headquarters at Watergate Hotel?

Mr. DEAN. First of all, on your description of my pleading guilty——

Mr. GOHMERT. Yeah, that came from The New York Times. You can take it up with them.

Mr. DEAN. Right.

Mr. GOHMERT. But did you ever order——

Mr. DEAN. May I explain before I answer?

Mr. GOHMERT. Well, you can either answer the question or not.

Mr. DEAN. I'd be happy to answer your question.

Mr. GOHMERT. Please.

Mr. DEAN. The question is, did I ever——

Mr. GOHMERT. Did you order——

Mr. DEAN. Yes——

Mr. GOHMERT [continuing]. Or ever convey the order to break into the Democratic headquarters?

Mr. DEAN. No.

Mr. GOHMERT. All right, thank you. And I know I wasn't——

Mr. DEAN. In fact, I have no evidence that anybody at the White House knew of it.

Mr. GOHMERT. Well, look, I've only got 5 minutes——

Mr. DEAN. Okay.

Mr. GOHMERT [continuing]. And the chairman is not as liberal with us as he is with the Democrats. But for those who are not familiar with the statements here, in his last civil suit, Mr. Dean said, it could be that I misspoke myself, it's either a misstatement or an incomplete transcription, highly possible I just misspoke myself. We were trying to paint with the broadest brush we could, and maybe not our ploy stating here, maybe it was imposing hindsight on events. That is a less than accurate description—don't know what he had said previously—obviously it was a self-serving answer.

So maybe I can help some of my colleagues if you're tempted to go after questions like that. But——

Mr. DEAN. I don't even know what you're referring to.

Mr. GOHMERT. It was the last civil suit you were involved in with Mr. Liddy, where he had begged you to sue him because he called you the biggest liar in the world and things of that nature. And you finally sued him with a bunch of other people and ultimately dismissed the case against him without going to trial, as he had asked you to do.

Mr. DEAN. That is not correct.

Mr. GOHMERT. But let me—there are similarities, you're right, with regard to Watergate. In both, an administration was seeking to illegally spy on another candidate, and both people were hired to attempt to gather evidence that could be used against a candidate. In Watergate, the committee to reelect the President hired burglars to break into the DNC headquarters. In Watergate, administration officials tried to find ways to use Federal dollars to pay for their criminal spying.

In Russiagate, members of the Federal Government used the intel, DOJ, and FBI communities to attempt to defeat a Presidential candidate. Then when that failed, to have him removed from office.

In Russiagate, the Clinton campaign and the FBI paid a foreign agent to collude with Russians to produce opposition research that turned out completely false, as the Mueller report indicated, that could be used to commit a fraud upon the FISA court and get multiple warrants to spy on opposition campaign. In Russiagate, it was the Clinton campaign, through Fusion GPS, in concert with the FBI, possibly intelligence, who hired people to do the spying.

And what really bothers me—oh, and by the way, Professor White Vance, I have an amazing admiration. I used to tell people, if you ever talk to a lawyer that says, I'm going to win at court on this and I'll win the appeal, you run from them, because they're either incompetent or they're corrupt, but you have such amazing

ability. You know you could win at court on appeal, so I'm in admiration.

But let me tell you, the frauds that were committed on the FISA court in this matter and the abuses of American citizens' Fourth Amendment rights, and the fact that people who once cared about this country's Fourth Amendment rights, are now more concerned with taking out another party's President, making sure he doesn't get reelected, tells me that we are in a greater danger for our Constitution at this time than we were from the outside World War II.

And I appreciate getting nearly 30 seconds short of what y'all did. Thank you.

Chairman NADLER. The gentleman's time has expired without questions.

The gentleman from Tennessee.

Mr. COHEN. Thank you, Mr. Chair.

First, Mr. Dean, I appreciate your role in history in ending a corrupt administration and restoring justice.

Chairman NADLER. Are you using the mike?

Mr. COHEN. Secondly, you were being asked by Congressman Lee about Don McGahn and his refusal to fire—or ask that special counsel be fired, and he didn't want to be compared to Bork and the Saturday Night Massacre.

What did you think McGahn meant by comparing the special counsel being fired for the Saturday Night Massacre to the role he was asked to engage in, and what was your reaction to the phone calls between the President and Mr. McGahn?

Mr. DEAN. Well, when I read the Mueller report and the details, my first reaction was that McGahn took the high road, acting more like Elliot Richardson and Bill Ruckelshaus, and I thought that was admirable.

Mr. COHEN. He had said he would consider resigning as he was——

Mr. DEAN. Yes.

Mr. COHEN. Prepared his resignation. Is that correct?

Mr. DEAN. Yes.

Mr. COHEN. The report goes on to detail how trapped McGahn felt. Quoting from page 86 of Volume II, McGahn recalled feeling trapped because he did not plan to follow the President's directive, but did not know what he would say the next time the President called. McGahn decided he had to resign.

Page 87 describes McGahn's phone calls later that evening with Priebus and Bannon. Priebus recalled that McGahn said that the President asked him to, quote, do crazy stuff—and I cleaned it up—but he thought McGahn did not tell him the specifics of the President's request because McGahn was trying to protect Priebus from what he did not need to know.

Ms. Vance, if McGahn had carried out the President's orders, would McGahn face legal jeopardy himself?

Ms. VANCE. So it's difficult to answer questions like that without knowing exactly what would have transpired, but there's an enormous risk that he would have. And at that point, there would have been both completed obstruction and a conspiracy to obstruct.

Mr. COHEN. Mr. Dean, as a former White House counsel, are these types of requests in the normal course of business?

Mr. DEAN. No.

Mr. COHEN. Mr. Dean, understanding the circumstances, was Don McGahn's decision to ignore the call to get Mueller fired and McGahn's reaction, to resign, reasonable and appropriate and commendable?

Mr. DEAN. Yes.

Mr. COHEN. Mr. Dean, understanding your history as someone who was in a similar position but chose differently, what did you think Don McGahn was afraid of? Why did he feel the need to protect both his Chief of Staff and other advisers?

Mr. DEAN. Well, I think he's somebody who learned from history.

Mr. COHEN. And if we don't learn from history, we're doomed to repeat it, are we not?

Mr. DEAN. Exactly.

Mr. COHEN. Yes, sir. The following quote and questions may pose a parliamentary risk—yeah. Let me ask you this, Ms. Vance, you said that there was a different standard—that the collusion was in plain sight and that you said that we had to prove beyond—when they brought a case, that they had to win it at trial and they had to win on appeal. Is that the same standard Congress would face in an impeachment hearing?

Ms. VANCE. You know, it's not, and that's a very good point. We've talked a little bit about whether a congressional inquiry would be a do-over of the Mueller investigation, and a congressional inquiry is very different.

When prosecutors consider cases, they have to find a Federal statute, a law that you all have enacted, and make sure that a defendant has violated—that they can prove a violation of all the elements of that statute. So here, the notion of a corrupt act and nexus and corrupt intent. Congress doesn't have those same restraints.

When Congress examines conduct in its oversight, in its impeachment function, your jurisdiction, as I understand it, is much broader, and you could reach conduct that we might categorize as lawful but awful, something that would be so inappropriate for a President that Congress would determine it needed to be sanctioned.

Mr. COHEN. So kind of would we have a—it's a different standard, but would the standard be kind of preponderance of the evidence instead of guilt beyond a reasonable doubt?

Ms. VANCE. So I think that's correct, and that the way that you deal with impeachment proceedings is largely up to how Congress chooses to move forward, the standards that you set, the way that you define high crimes and misdemeanors. It's a process that's less cabined by existing statutory criminal law than the conduct of someone like a special counsel would be.

Mr. COHEN. Thank you. Page 89 of Volume II says—and this is directly from the report—substantial evidence indicates the President attempts to remove the special counsel were linked to the special counsel's oversight of investigations that involved the President's conduct, and most immediately, reports that the President was being investigated for a potential obstruction of justice.

And on page 90 of the report, it states, there also was evidence the President knew he should not have made those calls to

McGahn. It goes on to say, quote, instead of relying on his personal counsel to submit conflicts—the conflict claims, the President sought to use his official powers to remove the special counsel.

Mr. Dean, do you agree and why?

Mr. DEAN. Well, I think it was inappropriate to use special coun—or the White House counsel, and White House counsel rejected being so used.

Mr. COHEN. And, Ms. Vance, as a former prosecutor, how would you evaluate the evidence presented in the report, and how does it compare to other cases you've seen prosecuted?

Ms. VANCE. So for prosecutors, when they evaluate evidence—you know, I think it's important just to be frank about this and to note that we're all people, right? We all have different backgrounds, different likes, different views, different politics. What prosecutors are trained to do is to check those beliefs at the door. So the office that I work in had, I assume, folks who were Republicans and Democrats. We largely didn't discuss politics in the office.

We look at the evidence through a very narrow filter. That filter is, evaluate what the law says, evaluate the evidence that you have, search for the truth, and charge cases where you believe you can prove beyond a reasonable doubt the elements of the crime. That's how we have to look at the evidence in the Mueller report. And in some instances, Mueller investigates in Volume II, 10 potential instances of obstruction of justice.

In my judgment, some of those I would not indict, but in at least three core areas, the areas involving removal of Special Counsel Mueller, and the President's efforts to get Jeff Sessions to unrecuse and restrict the nature of the investigation, there appears, to me, to be substantial evidence that would permit prosecutors to move forward.

Mr. COHEN. Thank you so much.

I yield back the balance of my time.

Chairman NADLER. The gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

At a memorial event for David Hamburg, Speaker Pelosi and I had a chance to discuss impeachment.

Mr. Dean, who wrote that?

Mr. DEAN. I did.

Mr. JORDAN. Nineteen—excuse me, 1 month ago, May 11th, 2019, haven't we been too long in not giving Trump a meaningful moniker? Should it be Deranged Don, Deadbeat Don, Demagogue Don? Thoughts, please, comments.

Mr. Dean, who wrote that?

Mr. DEAN. I assume that was mine.

Mr. JORDAN. It was yours.

Nineteen days ago, May 22nd, 2019, there was this: We are witnessing Trump's massive coverup of his criminal behavior as POTUS is incapable of accomplishing anything.

Mr. Dean, do you know who wrote that?

Mr. DEAN. I suspect that was me again.

Mr. JORDAN. It was you.

I want to focus on that last sentence. As POTUS, as President of the United States, he, Donald Trump, is incapable of accom-

plishing anything. When you made that statement, Mr. Dean, what did you have in mind? You thinking about the 3.2 percent economic growth rate we had in the last quarter? Thinking about the fact we got the lowest unemployment in 50 years? How about the fact that hostages are back from North Korea?

Maybe you were thinking about this. When you said the President of the United States was incapable of doing anything, were you thinking about the fact that the embassy is now in Jerusalem? I mean, I think about this one. Every single candidate for as many cycles as I can remember, Republican and Democrat, have promised the American people, you elect me, we're going to move the embassy to Jerusalem. And guess what, they get elected, and they come up with a million reasons why they can't do what they said they were going to do. But this President didn't. The embassy is now in Jerusalem.

So I'm just wondering, what were you thinking about when you said he's incapable of accomplishing anything?

Mr. DEAN. Mr. Jordan, I think that under the parliamentary rules of the House, I'm refrained from addressing a full answer to your question.

Mr. JORDAN. You weren't refrained in your tweets, in your comments, and the things you wrote.

Mr. DEAN. My tweets are not subject to the parliamentary rules.

Mr. JORDAN. They are subject to the state of mind and the perspective you bring to this hearing. I think the American people understand.

Let me ask you this, then. Did you give advice to Lanny Davis or Michael Cohen prior to Mr. Cohen's testimony to Congress?

Mr. DEAN. No.

Mr. JORDAN. Well, you said on Erin Burnett's show the night before Mr. Cohen testified in front of the Oversight Committee, that Michael Cohen should—you said you had talked to Lanny Davis and that Michael Cohen should hold his testimony as long as possible from Republicans. You didn't say that to Mr. Davis? You said it on Erin Burnett's show the night before Mr. Cohen testified.

Mr. DEAN. Well, I didn't—I didn't say it directly to Mr. Cohen was your question.

Mr. JORDAN. No, it wasn't. My question was, did you give advice to Lanny Davis or Michael Cohen prior to Mr. Cohen's testimony to Congress?

Mr. DEAN. Yeah. I have known Lanny Davis for almost a couple decades. And we have talked about it, and I did say, as soon as you turn your testimony over, it will be picked apart.

Mr. JORDAN. So you instructed Michael Cohen's lawyer to keep information from Republicans, to obstruct the committee work that we were doing in the Oversight Committee just a few months ago, you told that to Michael Cohen's lawyer?

Mr. DEAN. I didn't quite phrase it that way, no.

Mr. JORDAN. Well, you know what, they took your advice.

Mr. DEAN. I'm sorry?

Mr. JORDAN. They took your advice.

Mr. DEAN. Did they?

Mr. JORDAN. Yes.

Mr. DEAN. I didn't know that.

Mr. JORDAN. Mr. Cohen kept his testimony from us for as long as possible. But you know what else Mr. Cohen did that day? Lied. Lied seven times. And this is what I think concerns so many Americans. This is what concerns, I think, so many Americans about the work that's going on in this Congress, this 116th. The first—the first announced witness of the 116th Congress is Michael Cohen, a guy who sits in prison today for lying to Congress. Today, Chairman Nadler brings in front of the Judiciary Committee a guy to talk about obstruction of justice who went to prison in 1974 for obstructing justice.

Mr. DEAN. I did not go to prison.

Mr. JORDAN. Okay. You pled guilty to obstruction of justice. Glad you got to stay out of prison, then, I guess.

What bothers me the most, though, is this committee's failure to investigate how the whole Trump-Russia thing started. This is the Judiciary Committee. We're supposed—how this whole thing began. And I said this a few weeks ago, but I want to remind this committee what the Attorney General of the United States said 8 weeks ago when he testified in front of the Senate. Said four important things about the beginnings of the Trump-Russia investigation. Said there was a failure of leadership at the upper echelon of the FBI. His words not mine. Upper echelon. That's certainly true. Comey, McCabe, Baker, Strzok, Page have all been fired, demoted, let go, they're gone. Some are under investigation by the Justice Department. He said spying did occur, he said it twice. He said there's a basis for his concern about the spying that took place. And he used two terms that, again, I think this committee should find frightening and should be looking into: unauthorized surveillance and political surveillance. Scary terms.

So the good news is, even though this Congress has memorandums of understanding between the key committee chairmen on how they're going to coordinate their attack on the President, even though this Congress' first big witness, first big hearing, Michael Cohen, a guy who sits in prison for lying to Congress, and even though we now have a guy testifying about obstruction of justice who pled guilty to obstruction of justice, we should be looking into the things Bill Barr's is looking at. Now the good news is, Mr. Durham's doing that.

But this is the part, I think, that frustrates so many. Mr. Chairman, I would hope the Judiciary Committee, and the history this committee has for protecting fundamental liberties, would begin to look into those key issues, the whole premise for how this Trump-Russia investigation started in the first place.

And I'll finish again with this, Emmet Flood wrote a letter to the Attorney General a few weeks back. Made an important point. He said we would all do well to remember, if they can do it to a President, imagine what they can do to you and me. Imagine what they can do to regular citizens across this great country.

That should be what this committee most safeguards and most protects, and instead, we got memorandums of understanding between the chairmen, we got Michael Cohen testifying for 7 hours, getting advice from the witness here on obstructing the committee work and not sharing information with us in a timely fashion, and now we got John Dean, 45 years ago went to—pled guilty to ob-

struction of justice and now coming in to enlighten the Judiciary Committee on obstruction of justice when we could be going right to the start of how this whole thing started.

I yield back.

Chairman NADLER. I thank the gentleman.

Before I go to Ms.—to the next witness, I want to point out that this committee has no memorandum of understanding with any other committee with reference to any investigations. So I don't know—I don't know——

Mr. JORDAN. Half the committee chairmen do.

Chairman NADLER. This committee has no such memorandum of understanding. I'm not aware of any others, but there may be, but this committee has no such memorandum of understanding.

And number two, since the gentleman from Ohio cast aspersions on the witness, I would remind everyone that after the—after——

Mr. JORDAN. No, I didn't, Mr. Chairman. I read his statements.

Chairman NADLER. I'm speaking.

Mr. JORDAN. I did not cast aspersions. I read his statements.

Chairman NADLER. Very well. Since I believe the gentleman cast aspersions——

Mr. JORDAN. You're wrong.

Chairman NADLER. Fine. Since I believe the gentleman cast aspersions on the character and truthfulness of the witness, I would remind everyone that after exhaustive testimony in 1973, when the tapes were revealed, it was revealed that everything that Mr. Dean said was correct and truthful.

The next witness——

Mr. JORDAN. Mr. Chairman? Mr. Chairman, if I could——

Chairman NADLER. The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

Chairman NADLER. The gentleman from Georgia is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

Mr. Dean, relatively early on in the Nixon coverup, you told the President that there was a cancer on the Presidency, and then you came forward and blew the lid off of the whole coverup. Then you pleaded guilty, you paid your debt to society. And since that time, you have been an exemplary individual, committed to truth, justice, and protection of the rule of law. And for that, I want to thank you for your service to our country.

For the rest of the witnesses, thank you for your testimony today.

On January 25th, 2018, The New York Times reported that in June of 2017, the President ordered Don McGahn to have Special Counsel Robert Mueller fired. Shortly after that news broke, the President went on TV and said, quote, Fake news, folks, fake news, a typical New York Times fake story, end quote.

The report, however, documents a flurry of events—the Mueller report—documents a flurry of events behind the scenes after the Times reporting came out. Volume II of page 114 of the Mueller report says, quote, On January 26, 2018, the President's personal counsel called McGahn's attorney and said that the President wanted McGahn to put out a statement denying that he had been asked to fire the special counsel and that he had threatened to quit in protest. McGahn's attorney spoke with McGahn about that re-

quest and then called the President's personal counsel to relay that McGahn would not be making that statement. McGahn's attorney informed the President's personal counsel that the Times story was accurate in reporting that the President wanted the special counsel removed. Accordingly, McGahn's attorney said, although the article was inaccurate in some respects, McGahn could not comply with the President's request to dispute the story, end quote.

Mr. Dean, why could Don McGahn not comply with this request to put out a statement denying that he had been asked to fire Mueller?

Mr. DEAN. Excuse me. Because it would have been a—I suspect what he had in his—I'm projecting myself into his position. He didn't want to put out a false statement. He didn't want to become embroiled in something that he knew was troublesome. He'd already expressed that. It's not dissimilar from a situation that I found myself in when Nixon announced on August 29th of 1972, during the campaign, that when he was asked why didn't he appoint a special counsel, he said, well, because the Congress is investigating Watergate, the FBI is investigating Watergate, the General Accounting Office is looking into why the burglars had fresh $100 bills in their pocket. There are a number of committees of Congress that are starting to look at it, but he said most importantly, my White House counsel, John Dean, has investigated this entire matter and found that nobody presently employed in this White House had anything to do with this bizarre incident.

Mr. JOHNSON of Georgia. And that was a lie?

Mr. DEAN. And that was a lie. It was the first I heard of my investigation. And I was then asked after that, repeatedly, to issue a report based on my nonexistent investigation.

Mr. JOHNSON of Georgia. And you declined to do so, why?

Mr. DEAN. I did. Because it would have been a lie.

Mr. JOHNSON of Georgia. And what would have been the result for you?

Mr. DEAN. Theoretically, depending upon the venue, it could have been anything from a false statement to a perjurious statement.

Mr. JOHNSON of Georgia. You could have gone to prison, in other words?

Mr. DEAN. Yes.

Mr. JOHNSON of Georgia. For doing what you were asked to do?

Mr. DEAN. By the President.

Mr. JOHNSON of Georgia. Thank you. Page 115 of Volume II states, quote, On January 26, 2017, Hope Hicks recalled that the President asked White House Press Secretary Sarah Huckabee Sanders to contact McGahn about that New York Times story, and McGahn told Sanders there was no need to respond and indicated that some of the article was accurate, end quote.

Mr. Dean and also Professor Vance and Professor McQuade, what is your reaction to this internal effort to get McGahn to dispute the press report? Mr. Dean.

Mr. DEAN. I'll defer to the ladies to start first.

Ms. VANCE. Well, Congressman, I'll just say that this is part of four successive steps that the President takes in an effort to get the White House counsel, Don McGahn, to change the story, and this

isn't just in response to a press report. The Mueller report is very careful to say that at the point that this cascading series of requests go from the President to McGahn, they're outside of that window where you would just be trying to respond in the press, and this looks like an affirmative effort to create an official record that would confirm the President's story here, which is that he did not try to get McGahn to fire Bob Mueller.

And so they're actually four conversations. As you've reflected, there's the counsel-to-counsel call. There's Hope Hicks' testimony about the President's conversation with his press secretary. He has an additional conversation with Rob Porter, the staff secretary. And then finally, there's this Oval Office meeting where the President says to Don McGahn, look, you know, you need to change your story, I did not ask you to fire Mueller. And McGahn pushes back.

And so we have this series of efforts that don't culminate in obstruction because McGahn refuses to cooperate. But as Professor McQuade has already told us, this sort of crime, obstruction of justice, does not depend upon completing the crime. The attempt to obstruct justice is really the problem here. That's what interferes with the functioning of our criminal justice system, and that's why this conduct is so deeply troubling.

Chairman NADLER. The time of the gentleman has expired.

The gentleman——

Mr. JOHNSON of Georgia. Could I ask that Ms. McQuade, Professor McQuade, also be able to answer?

Chairman NADLER. If she's brief.

Ms. MCQUADE. I will be brief. The only thing I would add to that is, it demonstrates why it's important to look at the totality of the circumstances and the conclusion that Robert Mueller makes with regard to all four of those incidents that Professor Vance referred to, is that there is substantial evidence of an intent on the part of President Trump to prevent scrutiny of President Trump and his campaign.

Chairman NADLER. Thank you very much.

The gentleman——

Mr. JOHNSON OF GEORGIA. I yield back.

Chairman NADLER [continuing]. The gentleman from Florida, Mr. Gaetz.

Mr. GAETZ. Thank you, Mr. Chairman. I seek unanimous consent to enter into the record a December 30 of 2005 essay written by Mr. John Dean, entitled, "George W. Bush as the New Richard Nixon: Both Wiretapped Illegally and Impeachably."

Chairman NADLER. Without objection.

[The information follows:]

MR. GAETZ FOR THE OFFICIAL RECORD

George W. Bush as the New Richard M. Nixon: Both Wiretapped Illegally, and Impeachably; Both Claimed That a President May Violate Congress' Laws to Protect National Security

supreme.findlaw.com/legal-commentary/george-w-bush-as-the-new-richard-m-nixon.html

By JOHN W. DEAN

Friday, Dec. 30, 2005

On Friday, December 16, the *New York Times* published a major scoop by James Risen and Eric Lichtblau: They reported that Bush authorized the National Security Agency (NSA) to spy on Americans without warrants, ignoring the procedures of the Foreign Intelligence Surveillance Act (FISA).

It was a long story loaded with astonishing information of lawbreaking at the White House. It reported that sometime in 2002, Bush issued an executive order authorizing NSA to track and intercept international telephone and/or email exchanges coming into, or out of, the U.S. - when one party was believed to have direct or indirect ties with al Qaeda.

Initially, Bush and the White House stonewalled, neither confirming nor denying the president had ignored the law. Bush refused to discuss it in his interview with Jim Lehrer.

Then, on Saturday, December 17, in his radio broadcast, Bush admitted that the *New York Times* was correct - and thus conceded he had committed an impeachable offense.

There can be no serious question that warrantless wiretapping, in violation of the law, is impeachable. After all, Nixon was charged in Article II of his bill of impeachment with illegal wiretapping for what he, too, claimed were national security reasons.

These parallel violations underscore the continuing, disturbing parallels between this Administration and the Nixon Administration - parallels I also discussed in a prior column.

Indeed, here, Bush may have outdone Nixon: Nixon's illegal surveillance was limited; Bush's, it is developing, may be extraordinarily broad in scope. First reports indicated that NSA was only monitoring foreign calls, originating either in the USA or abroad, and that no more than 500 calls were being covered at any given time. But later reports have suggested that NSA is

"data mining" literally millions of calls - and has been given access by the telecommunications companies to "switching" stations through which foreign communications traffic flows.

In sum, this is big-time, Big Brother electronic surveillance.

Given the national security implications of the story, the *Times* said they had been sitting on it for a year. And now that it has broken, Bush has ordered a criminal investigation into the source of the leak. He suggests that those who might have felt confidence they would not be spied on, now can have no such confidence, so they may find other methods of communicating. Other than encryption and code, it is difficult to envision how.

Such a criminal investigation is rather ironic - for the leak's effect was to reveal Bush's own offense. Having been ferreted out as a criminal, Bush now will try to ferret out the leakers who revealed him.

Nixon's Wiretapping - and the Congressional Action that Followed

Through the FBI, Nixon had wiretapped five members of his national security staff, two newsmen, and a staffer at the Department of Defense. These people were targeted because Nixon's plans for dealing with Vietnam -- we were at war at the time -- were ending up on the front page of the *New York Times*.

Nixon had a plausible national security justification for the wiretaps: To stop the leaks, which had meant that not only the public, but America's enemies, were privy to its plans. But the use of the information from the wiretaps went far beyond that justification: A few juicy tidbits were used for political purposes. Accordingly, Congress believed the wiretapping, combined with the misuse of the information it had gathered, to be an impeachable offense.

Following Nixon's resignation, Senator Frank Church chaired a committee that investigated the uses and abuses of the intelligence derived from the wiretaps. From his report on electronic surveillance, emerged the proposal to create the Foreign Intelligence Surveillance Act (FISA). The Act both set limits on electronic surveillance, and created a secret court within the Department of Justice - the FISA Court -- that could, within these limits, grant law enforcement's requests to engage in electronic surveillance.

The legislative history of FISA makes it very clear that Congress sought to create laws to govern the uses of warrantless wiretaps. Thus, Bush's authorization of wiretapping without any application to the FISA Court violated the law.

Whether to Allow Such Wiretaps, Was Congress' Call to Make

No one questions the ends here. No one doubts another terror attack is coming; it is only a question of when. No one questions the preeminent importance of detecting and preventing such an attack.

What is at issue here, instead, is Bush's means of achieving his ends: his decision not only to bypass Congress, but to violate the law it had already established in this area.

Congress is Republican-controlled. Polling shows that a large majority of Americans are willing to give up their civil liberties to prevent another terror attack. The USA Patriot Act passed with overwhelming support. So why didn't the President simply ask Congress for the authority he thought he needed?

The answer seems to be, quite simply, that Vice President Dick Cheney has never recovered from being President Ford's chief of staff when Congress placed checks on the presidency. And Cheney wanted to make the point that he thought it was within a president's power to ignore Congress' laws relating to the exercise of executive power. Bush has gone along with all such Cheney plans.

No president before Bush has taken as aggressive a posture -- the position that his powers as commander-in-chief, under Article II of the Constitution, license any action he may take in the name of national security - although Richard Nixon, my former boss, took a similar position.

Presidential Powers Regarding National Security: A Nixonian View

Nixon famously claimed, after resigning from office, that when the president undertook an action in the name of national security, even if he broke the law, it was not illegal.

Nixon's thinking (and he was learned in the law) relied on the precedent established by Abraham Lincoln during the Civil War. Nixon, quoting Lincoln, said in an interview, "Actions which otherwise would be unconstitutional, could become lawful if undertaken for the purpose of preserving the Constitution and the Nation."

David Frost, the interviewer, immediately countered by pointing out that the anti-war demonstrators upon whom Nixon focused illegal surveillance, were hardly the equivalent of the rebel South. Nixon responded, "This nation was torn apart in an ideological way by the war in Vietnam, as much as the Civil War tore apart the nation when Lincoln was president." It was a weak rejoinder, but the best he had.

Nixon took the same stance when he responded to interrogatories proffered by the Senate Select Committee on Government Operations To Study Intelligence Operations (best know as the "Church Committee," after its chairman Senator Frank Church). In particular, he told the committee, "In 1969, during my Administration, warrantless wiretapping, even by the government, was unlawful, but if undertaken because of a presidential determination that it

was in the interest of national security was lawful. Support for the legality of such action is found, for example, in the concurring opinion of Justice White in *Katz v. United States*." (*Katz* is the opinion that established that a wiretap constitutes a "search and seizure" under the Fourth Amendment, just as surely as a search of one's living room does - and thus that the Fourth Amendment's warrant requirements apply to wiretapping.)

Nixon rather presciently anticipated - and provided a rationalization for - Bush: He wrote, "there have been -- and will be in the future -- circumstances in which presidents may lawfully authorize actions in the interest of security of this country, which if undertaken by other persons, even by the president under different circumstances, would be illegal."

Even if we accept Nixon's logic for purposes of argument, were the circumstances that faced Bush the kind of "circumstances" that justify warrantless wiretapping? I believe the answer is no.

Is Bush's Unauthorized Surveillance Action Justified? Not Persuasively.

Had Bush issued his Executive Order on September 12, 2001, as a temporary measure - pending his seeking Congress approval - those circumstances might have supported his call.

Or, had a particularly serious threat of attack compelled Bush to authorize warrantless wiretapping in a particular investigation, before he had time to go to Congress, that too might have been justifiable.

But several years have passed since the broad 2002 Executive Order, and in all that time, Bush has refused to seek legal authority for his action. Yet he can hardly miss the fact that Congress has clearly set rules for presidents in the very situation in which he insists on defying the law.

Bush has given one legal explanation for his actions which borders on the laughable: He claims that implicit in Congress' authorization of his use of force against the Taliban in Afghanistan, following the 9/11 attack, was an exemption from FISA.

No sane member of Congress believes that the Authorization of Military Force provided such an authorization. No first year law student would mistakenly make such a claim. It is not merely a stretch; it is ludicrous.

But the core of Bush's defense is to rely on the very argument made by Nixon: that the president is merely exercising his "commander-in-chief" power under Article II of the Constitution. This, too, is a dubious argument. Its author, John Yoo, is a bright, but inexperienced and highly partisan young professor at Boalt Law School, who has been in and out of government service.

To see the holes and fallacies in Yoo's work - embodied in a recently published book -- one need only consult the analysis of Georgetown University School of Law professor David Cole in the *New York Review of Books*. Cole has been plowing this field of the law for many years, and digs much deeper than Yoo.

Since I find Professor Yoo's legal thinking bordering on fantasy, I was delighted that Professor Cole closed his real-world analysis on a very realistic note: "Michael Ignatieff has written that 'it is the very nature of a democracy that it not only does, but should, fight with one hand tied behind its back. It is also in the nature of democracy that it prevails against its enemies precisely because it does.' Yoo persuaded the Bush administration to untie its hand and abandon the constraints of the rule of law. Perhaps that is why we are not prevailing."

To which I can only add, and recommend, the troubling report by Daniel Benjamin and Steven Simon, who are experts in terrorism and former members of President Clinton's National Security Council. They write in their new book The Next Attack: The Failure of the War on Terror and a Strategy for Getting It Right, that the Bush Administration has utterly failed to close the venerable loopholes available to terrorist to wreak havoc. The war in Iraq is not addressing terrorism; rather, it is creating terrorists, and diverting money from the protection of American interests.

Bush's unauthorized surveillance, in particular, seems very likely to be ineffective. According to experts with whom I have spoken, Bush's approach is like hunting for the proverbial needle in the haystack. As sophisticated as NSA's data mining equipment may be, it cannot, for example, crack codes it does not recognize. So the terrorist communicating in code may escape detection, even if data mining does reach him.

In short, Bush is hoping to get lucky. Such a gamble seems a slim pretext for acting in such blatant violation of Congress' law. In acting here without Congressional approval, Bush has underlined that his Presidency is unchecked - in his and his attorneys' view, utterly beyond the law. Now that he has turned the truly awesome powers of the NSA on Americans, what asserted powers will Bush use next? And when - if ever - will we - and Congress -- discover that he is using them?

Mr. GAETZ. Mr. Dean, how many American Presidents have you accused of being Richard Nixon?

Mr. DEAN. I actually wrote a book about Mr. Bush and Mr. Cheney with the title "Worse than Watergate."

Mr. GAETZ. So it's sort of become a—did you make money on that book?

Mr. DEAN. It was a very successful book, yes.

Mr. GAETZ. How much money did you make on it?

Mr. DEAN. I'm sorry, I don't have any idea.

Mr. GAETZ. More than a million bucks?

Mr. DEAN. No.

Mr. GAETZ. More than half a million bucks?

Mr. DEAN. I said I don't have any idea.

Mr. GAETZ. How much money do you make from CNN?

Mr. Dean. I don't really know exactly.

Chairman NADLER. I think I'm going to object to the——

Mr. GAETZ. Wait a second, wait a second. Mr. Dean has made a cottage industry out of accusing Presidents of acting like Richard Nixon. I would like to know how much money he makes based on making these accusations and exploiting them for his own economic——

Mr. DEAN. Mr. Gaetz. Mr. Gaetz, I appreciate you were not born at the time this all happened. The—it's not by choice that I've done a lot of this. It's that I've been dragged into it.

Mr. GAETZ. Who forced you—who forced you to accuse George W. Bush of being Richard Nixon?

Mr. DEAN. Who forced me to? It was right after I had to spend 10 years in a lawsuit knocking down false statements about what my role had and hadn't been.

Mr. GAETZ. Well, let's speak now to the truth or falsity of statements. Do you have personal knowledge regarding the truth or falsity of a single material fact in the Mueller report?

Mr. DEAN. I think, if you recall, the first thing I said, I'm not here as a fact witness.

Mr. GAETZ. You're here to provide historical context?

Mr. DEAN. Exactly.

Mr. GAETZ. And throughout history, you accuse Presidents of acting like Richard Nixon, and you make money off of it, right?

Mr. DEAN. Not all Presidents, no.

Mr. GAETZ. But a few, more than one——

Mr. DEAN. But if you do act like him, I point it out.

Mr. GAETZ. Let me ask you this question. How do Democrats plan to pay for Medicare for All?

Mr. DEAN. I'm sorry?

Mr. GAETZ. Well, I figured if we were going to ask you about stuff you don't know about, we'd start with the big stuff. So do you know how they plan to pay for Medicare for All?

Mr. DEAN. Who? The Democrats or which candidate or—can you be more specific?

Mr. GAETZ. Let's get specific to Nixon, since that appears to be why you're here. Do you believe——

Mr. DEAN. Well, actually, Nixon did have a healthcare plan.

Mr. GAETZ. Well, good. That's good. Well, do you believe if we—if we turned the lights off here and maybe lit some candles, got out

a Ouija board, we could potentially raise the specter of Richard Nixon?

Mr. DEAN. I doubt that.

Mr. GAETZ. Well, it seems to be—it seems to be the objective. You know, here we sit today in this hearing with the ghost of Christmas past, because the chairman of the committee has gone to the Speaker of the House and sought permission to open an impeachment inquiry, but she has said no. And so instead of opening the impeachment inquiry into Donald Trump, which is what the chairman wants to do and what I presume a majority of Democrats want to do, we're here reopening the impeachment inquiry potentially into Richard Nixon, sort of playing out our own version of That '70s Show. And what I really regret, Mr. Dean——

Mr. DEAN. It is striking, Mr. Gaetz——

Mr. GAETZ[continuing]. You're here as a prop. You are functionally here as a prop, because they can't impeach President Trump, because 70 percent of Democrats want something that 60 percent of Americans don't. So they're in this no-win situation, and you sit before us here with no knowledge of a single fact on the Mueller report, on a hearing entitled "Lessons from the Mueller Report." Here's the ——

Mr. DEAN. Mr. Gaetz, may I answer your question, please?

Mr. GAETZ. It's not your time, Mr. Dean, it's my time. So here's the—so here's the deal, right. We have a false accusation against the President of the United States that he was an agent of Russia. My colleagues on the Democratic side made that accusation. And so where do we go from here? Either we look into how the President reacted to a false allegation against him or we look into why, for 22 months, we allowed a false accusation to tear this country apart.

Now to me, it seems like a far more relevant inquiry to figure out why the FISA court was lied to, something that you have spoken a great deal about, Mr. Dean, to find out why the recordings and the transcripts from George Papadopoulos where he asserted that he wasn't doing any work with Russia was not brought before the FISA court. None of that.

We also would love to know why the FBI turned from an organization that was supposed to be investigating crimes into one that sought to shape public opinion. You have Comey and McCabe and that whole regime of leadership, lying and leaking, and the reason they were doing it is because they didn't really think that the job of the FBI was to investigate and bring cases for prosecution. They thought the role of the FBI was to try to shape public opinion, and that's really why we're here, and that's what I really think all Americans ought to have an interest in stopping.

And you held these views, you wrote them down. You said that illegal surveillance was one of the worst things that we should fight against as a government, and now here, we are continuing to engage in this frivolous exercise of going after the President, despite the fact that there was absolutely no collusion. You guys need to get your act together and figure out if you're going to open an impeachment inquiry or not, because this is a straight-up fiction.

I yield back.

Chairman NADLER. The gentleman's time is expired. The witness may answer the question.

Mr. DEAN. That was a speech. I don't believe I can respond to it. It's not sufficient time.

Chairman NADLER. The gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman.

Returning to the facts of the Mueller report, something that my colleagues on the other side are taking great pains to avoid. Let me—let's go back to where we left off. After McGahn initially rebuffed the White House's request to dispute the press reports that the President asked him to fire the special counsel, the report describes additional efforts pursued by the White House to counteract that reporting.

Pages 115 to 116 of Volume II, details on the interaction between President Trump and White House senior aide, Rob Porter. And I quote the Mueller report. Quote, On February 5, 2018, the President complained about the Times article to Porter. The President told Porter that the article was BS—for the record, the President did not abbreviate—and he had not sought to terminate the special counsel.

It then says, and I quote, the President then directed Porter to tell McGahn to create a record to make clear that the President never directed McGahn to fire the special counsel. Porter thought through—thought the matter should be handled by the White House communications office, but the President said he wanted McGahn to write a letter to the file, quote, for our records, and wanted something beyond a press statement to demonstrate that the reporting was inaccurate. The President referred to McGahn as a, quote, lying bastard, and said that he wanted a record from him. Porter recalled the President saying something to the effect of, quote, if he doesn't write a letter, then maybe I'll have to get rid of him.

Mr. Dean, as former White House counsel, what does it mean when you're being asked to write a letter to the file for our records, and what is the purpose of such a document?

Mr. DEAN. Well, this appears to have been a false record that would be there, that could later be used to impeach Mr. McGahn should he become a witness. So it was—it was a lacing of the record in a way that was favorable to the President and could later discredit McGahn's testimony.

Mr. DEUTCH. Is it your understanding that White House counsel can be fired for refusing to write such a letter or for refusing to dispute truthful press reports of his or her own actions?

Mr. DEAN. The White House counsel can be dismissed for any reason. He serves at the pleasure of the President.

Mr. DEUTCH. So on page 116 of Volume II, there's a description of Porter and McGahn's subsequent discussion about the press reports and the President's—and the President's request. Quote, McGahn had planned to resign rather than carry out the order, although he had not personally told the President he intended to quit. Porter told McGahn that the President suggested that McGahn would be fired if he did not write the letter.

Professor McQuade, what's your reaction to this request for a letter from McGahn?

Ms. MCQUADE. This to me—this to me, Congressman, is perhaps the most serious allegation of obstruction of justice in the entire report. This is asking Don McGahn to create a false document, to lie, to manufacture evidence. This is the kind of thing that gets charged as obstruction of justice all the time. And even Mr. Malcolm and Attorney General Barr would agree, I think, that this constitutes obstruction of justice even by a President because it is not within his permissible executive powers.

Mr. DEUTCH. And, Professor Vance, is there a Federal statute against falsifying records?

Ms. VANCE. So there actually is, but Mueller, in his consideration here, looks at the obstruction of justice statutes. He looks at 1503, 1505, 1515. And without going sort of into the arcane way that the obstruction statutes function together, it's clear that this conduct would be violative at a minimum of the catch-all clause in 1512.

Mr. DEUTCH. Right. And so the day after Porter was unable to convince McGahn, the report describes a meeting between McGahn and the President of the United States. In advance of the meeting, the President's personal attorney called McGahn's personal attorney and said, quote, McGahn could not resign no matter what happened in the meeting.

On page 116, Volume II, it then details the meeting. Quote, the President began the Oval Office meeting by telling McGahn that The New York Times story did not look good and McGahn needed to correct it. McGahn recalled the President said, and I quote, I never said to fire Mueller. I never said fire. The story doesn't look good. You need to correct this. You're the White House counsel.

The report then goes on to say, quote, McGahn told the President he did not understand the conversation that way, and instead had heard, call Rod, there are conflicts, Mueller has to go. The President asked McGahn whether he would do a correction and McGahn said no.

Professor McQuade, what's your reaction to this meeting as I've described it thus far?

Ms. MCQUADE. What McGahn says is that he thought that President Trump was testing his meddle, that is, seeing how firm he was in his recollection of what had happened, and whether he was going to be movable, and McGahn was steadfast and stuck to his guns and said, no, this is what happened, you did ask me to fire him. Maybe you didn't use the word "fire," but you said he needs to go, you have to remove him. And so even if the precise words were not accurate, the gist of the story was, and McGahn was steadfast in his refusal to deny it falsely.

Mr. DEUTCH. I thank you, Professor McQuade.

Thanks to all of our witnesses, and I appreciate the attention that you're giving the facts as we proceed through this.

Mr. Chairman—Mr. Chairman, just if I may, we were told earlier by one of our colleagues what this committee should most safeguard and protect. We were given some guidance on what that should be, and I think as we work through this, it's clear that what this committee should most safeguard and protect is getting the truth and defending the Constitution.

I yield back.

Chairman NADLER. I thank the gentleman for the observation.

The gentleman from Arizona, Mr. Biggs, is recognized.

Mr. BIGGS. Thank you, Mr. Chairman.

You know, I appreciate all of you being here today, but I do find this to be a bit of a—an absurd hearing that we're holding today.

Let's talk about Mr. Dean for just a second. You're no fall guy in the Watergate scandal. The FBI referred to you as the master manipulator of the coverup.

Mr. DEAN. Incorrectly.

Mr. BIGGS. The U.S. attorney said that you were at the center of the criminality. The special counsel's office found 19 material discrepancies between your testimony and was what was found recorded on White House tapes. What was actually recorded, 19 material discrepancies.

That makes you as an additional convicted felon, sentenced 1 to 4 years in prison. Although you tell us that you didn't serve—you didn't go to prison, and that's true, you didn't go to prison. You went to a special witness facility, while you were testifying, after you turned State's evidence. Allegations against you included the conspiracy to obstruct justice; rehearsing Jeb Magruder for his false grand jury testimony, which would be subordination of perjury; destroying documents retrieved from Howard Hunt's office, which would be destruction of evidence; taking $4,000 of campaign funds from the office safe to pay for your honeymoon, that would be embezzlement; and improperly disclosing prosecutorial information to Watergate defense counsel, which would be misuse of government information.

Those things would make you, in my opinion, an inherently incredible witness. But see, we're not just talking about your credibility as a witness. You're a biased witness as well. You spent the last 45 years trying to rehabilitate yourself, and I don't blame you. And you've written numerous books, you've claimed multiple Republican administrations as being worse than Watergate. You wrote a book in 1987 called "Worse Than Watergate." It's about Bush and Cheney. You later wrote another book—having called this President, by the way, a nitwit—but your other book is called "Broken Government: How Republican Rule Destroyed the Legislative, Executive, and Judicial Branches." Somehow, the impeachment against Mr.—former President Clinton, which you described as absurd, but every Republican President since virtually has been accused of impeachable offenses by you. That makes you a biased witness. Incredible and biased.

Moreover, you've come in here today, and it's the one thing I absolutely agree with you on, you're not—you don't have any expertise with regard to facts. You're not the fact witness. You said that, it's written right in your report. I don't disagree with that at all. I agree with you a hundred percent. But you're trying to give us historical context. And when you try to give us historical context, I refer you back to, number one, incredible witness; number two, biased witness. So so much of what you say seems very difficult to accept at face value, quite frankly. So I had to leave it there.

But I will just say that our chairman has said that obstruction of justice is a, quote, serious crime that strikes at the heart of our justice system, close quote. Is it not ironic, then, that you were brought here today as one convicted of obstruction of justice, with

no information regarding the underlying Mueller report. In fact, none of the witnesses have it. This is all—this is all conjecture, legal posturing, discussion back and forth, banter back and forth. It doesn't get at the heart. We—you don't know any more than any of us.

Everybody up here, I would hope, has read the Mueller report. If you've read it—and it sounds like most of you have and all of you have—then that's a good thing, but it doesn't mean you have any kind of special kind of information to give to us today. So that's a problem.

I'm going to cut right now to the distinction that was made by Professor McQuade, which I thought was quaint. Execute versus faithfully execute. Who determines whether someone's faithfully executed it? Whether it be the executive branch, that would be the President. So I want to give you some things.

Delaying the ACA past its enactment date, would that be faithfully executing? Probably not. Refusing to enforce Federal drug laws under, quote, prosecutorial discretion? Probably not faithfully executing. Allowing the IRS to target Conservative groups? Probably not faithfully executing your duties under the law. Creating DAPA in addition to DACA, which was ruled unconstitutional by the U.S. Supreme Court? Probably not faithfully executing your duties. Attempted to recess a point three NLRB members and the CFPB head, all found to be illegal? Probably not—probably not faithfully executing your duties. And if your administration had lost more Supreme Court cases than any other modern President, one might question whether you were faithfully executing your duties because the United States Supreme Court repeatedly rejected what you were attempting to do.

So I find it interesting that that was even brought up, but, again, this is an absurdist act. But I will say this. At least when I read Ionesco or Pirandello, I know one thing, they're trying to really get at something serious. And this has turned into Vaudevillian Farce to me.

My time has expired.

Chairman NADLER. I'll permit Mr. Dean to answer the—aspersions on him.

Mr. DEAN. Mr. Biggs, if I might, I did my best to tell the truth when I was asked. I did my best internally to break up the Watergate coverup when I realized we were on the wrong side of the law. It was an unpleasant role to have to fulfill. But I do know this subject pretty well. I spent 4 and a half years recently transcribing all of Mr. Nixon's Watergate conversations. I learned a lot I had no knowledge of.

When I served as White House counsel, it was 255 days after the arrest at the Watergate that I had my first meeting with Richard Nixon. I would have 39 meetings: 37 of them are recorded; 13 are television—excuse me—are telephone calls; 26 are meetings.

Earlier was mentioned that I had somehow misrepresented these meetings. The person who did that did it based on 9 tapes when there are 39. Others have looked at all of them and say, well conflated some dates, I got the gist of all of the conversations correct.

As a former assistant—as a former U.S. attorney, I think you can appreciate when somebody's in the Witness Protection Program, there's a pretty serious reason. I was in and out of it for 18 months because of the death threats. That wasn't a pleasant place to be.

Finally, I noticed that you went to ASU. I happen to have been the Goldwater Professor of American Institutions there. And I guarantee you I tried to educate those students on the facts. So you might want to take it up with the regents if you have these kinds of problems with me.

Chairman NADLER. The gentleman's time has expired.

The gentlelady from California, Ms. Bass.

Ms. BASS. Yes, I want to continue to focus on page 116 of Volume II.

The President asked McGahn in the meeting why he had told Special Counsel Office investigators that the President had told him to have special counsel removed. McGahn responded that he had to and that his conversations with the President were not protected by attorney-client privilege.

Mr. Dean, as a former White House counsel, why would such conversations not be covered by attorney-client privilege?

Mr. DEAN. Congressman Bass, the rule—there could be partial coverage of attorney-client. What happened during the Clinton impeachment is that this was tested in the courts in the District of Columbia and determined that, indeed, there was no such privilege, that government lawyers really do owe it to the public to be—when asked—able to report their relationships with their principals. So it was more of a matter of, you know, transparency than privacy in these instances. So Lindsey, was ruled, for example, in the Lindsey case to not have a privilege with the First Lady, Hillary Clinton.

Ms. BASS. Thank you.

Before continuing, I'd like the witnesses to look at the demonstrative displayed which goes through a timeline of these events. And I'd like to ask Professor Vance, what is your reaction to the events in this timeline?

Ms. VANCE. So this is the timeline—I'm sort of trying to read it quickly as we look at it.

Chairman NADLER. Use the mike, please.

Ms. VANCE. Sorry, you all.

I'm reading the timeline as I'm responding to your question. But this is, again, the President's—this cascading conduct where the President tries repeatedly to get McGahn to fire the special counsel. We already know what his reaction was to news of the special counsel's firing. Now he seems determined to have him removed. And Don McGahn, by the same token, as Mr. Dean has explained, realizes that he cannot participate in that for the obvious reasons.

This reflects these four different steps that the President takes repeatedly trying to get McGahn to fire the special counsel.

Ms. BASS. Thank you.

Well, still on page 116, the reports says, and I quote, The President then asked: What about these notes? Why do you take notes? Lawyers don't take notes. I never had a lawyer who took notes.

McGahn responded that he keeps notes because he is a real lawyer and explained that notes create a record and are not a bad thing.

The President said: I've got a lot of great lawyers like Roy Cohn. He did not take notes.

So, Professor McQuade, what purpose or function does note taking serve for lawyers? What are the negative consequences if a lawyer does not take detailed notes, especially when interacting with clients?

Ms. MCQUADE. I think an ethical lawyer takes notes because he wants to preserve a record of what actually happened so that if there is a question a year or 2 years from now, we can go back and look at the notes and have a full understanding of the facts.

The reason to not take notes, I maintain one of which would be to maintain plausible deniability. There is no record of what actually happened, and you maintain the ability to deny things if there is no record.

Ms. BASS. Mr. Dean, as a common practice or in the ordinary course of business for a White House counsel to document or take notes of his or her meetings in the White House, including those with the President.

Mr. DEAN. I think it depends on the counsel. I was once asked by one of the senior members of the staff, Richard Moore, if I was keeping notes. I was talking to him about some of the problems when he was asked to assist me with the bogus report.

And he was an attorney, had gone to Yale. I thought I should square with him and tell him that there were reasons I wasn't taking notes because he thought these were pretty historic events. And I advised him that I thought it would be very dangerous to take notes.

Anyone who has listened to the Nixon tapes realized how dangerous, indeed, it might be to have those notes. I wished I had.

Ms. BASS. Were you ever told not to take notes?

Mr. DEAN. No. In fact, H.R. Haldeman, the chief of staff, took remarkable notes in telephone calls and in the Oval Office. But his notes were only followup activities that he was responsible for. They've often been misread.

Ms. BASS. And, Professor Vance, has a client ever asked you not take notes of your conversations with them? And would your answer be different if you knew the client was facing some type of investigation?

Ms. VANCE. So I've spent most of my life as a Federal prosecutor, but I did spend 5 to 6 years in private practice. I've never had a client ask me to not take notes. And, in fact, that would be a red flag that there was a problem if someone did.

Ms. BASS. Thank you.

I yield.

Chairman NADLER. The gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Everybody knows what is going on here. For 2 and a half years now, the American people were force fed this monstrous lie that Donald Trump is a traitor who conspired with a hostile foreign government to steal the election. This lie was concocted through a

phony dossier commissioned by the Clinton campaign. It was used by the highest officials in the FBI, our intelligence agencies, and our Justice Department first in a failed attempt to interfere with our 2016 Presidential election and then to undermine the constitutionally elected President of the United States.

The first calls for Donald Trump's impeachment were heard within 1 week of the election. That was 2 months before he was even inaugurated as President. The day after the 2018 election, the chairman was overheard discussing his impeachment plans on an Acela train. Despite an outrageously biased team of partisan zealots who were assembled by Mr. Mueller, which included the now infamous Peter Strzok and Lisa Page, and some of the most abusive prosecutorial tactics employed, the $25 million, 22-month investigation found no evidence to support the collusion lie.

So now we have a new lie, that the President obstructed justice in the investigation in which he was falsely accused of treason. The only evidence we are presented is that he was blowing off Trumpian steam behind closed doors in words that amounted to no action whatsoever. And they ignore the fact there was no underlying crime. His campaign and administration turned over every document requested of them, some 1.4 million pages. He waived executive privilege to allow his White House counsel to testify. And, by the way, he had the authority to do directly what he's accused of suggesting others do, and he did not.

I have to tell you, if every politician told his—who tells his staff, "I'd like to strangle that guy," is ipso facto guilty of attempted measured, you might as well turn out the lights and close the doors in this building.

Now, Mr. Malcolm, you're a former assistant U.S. attorney and Deputy Assistant Attorney General. I'd like your professional opinion of several aspects of the Mueller report.

The entire genesis of the Russia collusion hoax was the Steele dossier and how it was used by government officials to promote this false narrative, to influence our election, and to use it as the basis of warrants to spy on the Trump campaign, yet the Mueller report largely ignores the very seminal acts that gave rise to these charges in the first place.

Does that raise in the red flags with you?

Mr. MALCOLM. First of all, thank you for the question. I was feeling lonesome here.

I look forward to reading the Department of Justice's inspector general's report on that very issue. But there's scant mention of it in the Mueller report; that's true.

Mr. MCCLINTOCK. Does that trouble you?

Mr. MALCOLM. No. Look, he did what he did. He had his focus. There are other things that he could have focused on that I wish he would have. But it seems that those matters are getting the attention that they deserve now.

Mr. MCCLINTOCK. Well, two revelations have already arisen involving the Mueller report. One concerns the report's recount of a conversation between John Dowd, the President's counsel, and Robert Keller on behalf of Michael Flynn. It omitted about half of Dowd's words to give the false impression of suborning a witness.

The other thing we've learned recently is that references to Konstantin Kilimnik's interactions with Paul Manafort in the Mueller report identify him as having ties to Russian intelligence but omit the fact that Kilimnik was, in fact, a U.S. intelligence asset.

Do these material omissions raise any concerns with you?

Mr. MALCOLM. Well, I've read both of those. With respect to the references to the joint defense agreement, even when I read it at the time in the Mueller report, there's nothing wrong with the defense counsel for another person calling up, even someone who's cooperating with the government, and saying: Look, one, you can't breach what was said in the joint defense agreement——

Mr. MCCLINTOCK. But omitting the——

Mr. MALCOLM. I'm sorry?

Mr. MCCLINTOCK. Omitting the exculpatory——

Mr. MALCOLM. Yeah. You know, I——

Mr. MCCLINTOCK. Does that bother you?

Mr. MALCOLM. Yes, it bothers me. And I thought it was an unfair characterization in the report, even when I read it at face value.

Mr. MCCLINTOCK. And the omission that Kilimnik was, in fact, a U.S. intelligence asset?

Mr. MALCOLM. If that's true, then it would be—I would be bothered by its omission.

Mr. MCCLINTOCK. It was recently revealed that Trump campaign workers were lured overseas by U.S. intelligence agencies specifically to evade U.S. laws on observation.

Does this raise any concerns with you?

Mr. MALCOLM. Yes. It would certainly raise concerns. And that's what—I assume that matter is now going to be covered.

Mr. MCCLINTOCK. We're regaled with all of Trump's bombastic statements behind closed doors telling his staff to do this and do that. But if the President had actually been serious, why couldn't he have simply picked up the phone and said, "Mueller, you're fired"?

Mr. MALCOLM. Well, that's a very good point. So, when you are going to look at the context in which statements are made, it also includes the individual involved. And let me be clear: I'm not here to defend the President's conduct, just the rule of law. You know, there are many things the President does that I wouldn't do. But just because somebody acts impulsively or in an uncivil manner does not mean that they commit a crime.

He has surrounded himself with people who are used to his style who sometimes realize that this is a President who publicly and privately acts impulsively and vents. And sometimes he—they ignore him. And, in fact, there have been no repercussions to any of the people who ignored him. And you are correct. The President could have fired Rod Rosenstein. He could have rescinded the regulation that called for the—you know, when Mueller could have been fired. He could have fired Mueller. He could have done any number of those things. That would have caused political problems for him, but he could have done them, and he didn't.

Mr. MCCLINTOCK. Thank you.

Chairman NADLER. The gentleman's time has expired.

The gentleman from Rhode Island, Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman.

Again, I want to return to some other attempts to remove the special counsel that are detailed in the Mueller report.

The report goes on to document other efforts to remove the special counsel from office or limit his investigation. On page 91 of Volume II, the report identifies an incident involving Corey Lewandowski, a senior Trump campaign adviser. On June 19, shortly after McGahn initially refused to take the steps to fire Special Counsel Mueller, as we've discussed already, the report says, and I quote: During the June 19 meeting, Lewandowski recalled that, after some small talk, the President brought up Sessions and criticized his recusal from the Russia investigation. The President told Lewandowski that Sessions was weak and had the President known about the likelihood of recusal in advance, he would not have appointed Sessions. The President then asked Lewandowski to deliver a message to Sessions, and said, "Write this down," and I quote, "Write this down." This was the first time the President had asked Lewandowski to take dictation. And Lewandowski wrote as fast as possible to make sure he captured the content correctly.

The alleged dictated message as noted on page 91 is as follows, and I quote: The President directed that Sessions should give a speech publicly announcing, I know that I recuse myself from certain things having to do with specific areas, but our POTUS is being treated very unfairly. He shouldn't have a special prosecutor or counsel because he hasn't done anything wrong. I was on the campaign with him for 9 months. There were no Russians involved with him. I know for a fact because I was there. He didn't do anything wrong except he ran the greatest campaign in American history, end quote.

The dictated message went on to state that Sessions would meet with the special counsel to limit his jurisdiction to future election interference, and I quote: Now a group of people want to subvert the Constitution of the United States. I'm going to meet with the special prosecutor to explain this is very unfair and let the special prosecutor move forward with investigating election meddling for future elections so that nothing can happen in future elections, end quote.

Professor Vance, what is your reaction to the contents of this dictated message to the Attorney General?

Ms. VANCE. Congressman, Ranking Member Collins started this hearing by talking about how serious the events that are reencountered in Volume I of the Mueller report and often ignored are. And that's the attack on our country by Russia, the effort to interfere with our election, an ongoing and a sustained attack on the United States.

What the President of the United States is trying to do here through Corey Lewandowski is to have Senator Sessions curtail the extent of the Mueller investigation so that that attack by Russia would have been off the table.

There are other takeaways. But that, I think, deserves our attention, that the President, in order to save himself, was willing to forego any investigation into what Russia had done to this country.

Mr. CICILLINE. And Professor McQuade.

Ms. MCQUADE. Yeah. I think that the most significant part of that is that if you think about what President Trump wanted to do, he wanted to focus the investigation solely on future investigations. That meant no scrutiny of the 2016 election. That, in part, was perhaps to prevent scrutiny of his campaign's misconduct or delegitimatizing his campaign or conduct by members of his family or campaign that could have amounted to crimes, which, of course, he didn't know the conclusion of Mueller's report at that time.

But the impact on national security. Think about that. He wanted Robert Mueller not to examine why Russia and how Russia interfered with our election. That is a threat to our national security. And that was a failure of responsibility of the President of the United States who has a duty to faithfully execute the laws.

Mr. CICILLINE. Returning again to Mueller report, pages 92 to 93 of Volume II describe that Lewandowski was unable to get the message to Attorney General Sessions. But a month later, and I quote: In a July 19 meeting with Lewandowski, the President raised his previous request and asked if Lewandowski had talked to Sessions. Lewandowski told the President that the message would be delivered soon. Lewandowski recalled that the President told him that if Sessions did not meet with him, Lewandowski should tell Sessions he was fired. Immediately following the meeting with the President, Lewandowski saw Dearborn in the anteroom outside the Oval Office and gave him a typewritten version of the message that the President had dictated to be delivered to Sessions.

Mr. Dean, is it the normal course of business to use nongovernment personnel to communicate with Cabinet-level officials?

Mr. DEAN. Well, I think Presidents have their kitchen Cabinets through which they often undertake some actions. But not of this nature where you're trying to remove an Attorney General. It would be highly unusual.

What struck me in reading all this, as with the references to Porter, is that there's no conspiracy charge in here because these people, while they went up to the line, it's not clear how close they came to agreeing and participating or just step back.

Mr. CICILLINE. Thank you, Mr. Dean.

Mr. Chairman, I would just note for the record, before I yield back, that there's been a lot of clamor for fact witnesses. And maybe our colleagues on the other side of the aisle would find the same strong voice in condemning the administration's efforts by encouraging witnesses to defy subpoenas and refuse to come before this committee. Maybe they will join us in our ongoing effort to get witnesses before the committee.

And, finally, there's been a lot of discussion about the origins of the Russia investigation. I would just suggest to my colleagues on the other side of the aisle, go to pages 80 through 96, and the American people as well. It gives significant detail about the beginning of this investigation and the role of George Papadopoulos. And I think it should settle all your questions.

And, with that, I yield back.

Chairman NADLER. I thank the gentleman for yielding back. And it is true that fact witnesses have been ordered by the White House not to appear before this committee, but we'll get them.

The gentleman from Virginia, Mr. Cline.

Mr. CLINE. Thank you, Mr. Chairman.

It's my hope that we do have the witnesses in question, because this has really degenerated into a sad spectacle. The majority has a bunch of questions. They have neat charts that all have questions that are really meant for the Attorney General or Special Counsel Mueller or Mr. McGahn. But, instead, we have these witnesses here.

I hope that the majority would enter into real negotiations with the White House instead of what happened, which was several weeks of demanding that the Attorney General release grand jury testimony against Federal statutes and break the law in violation of code and instead move off of these demands that we have staff lawyers ask questions of the Attorney General, which has not been done in any other case outside of an impeachment hearing, and actually negotiate with the Attorney General. And I bet we could have these questions before the actual fact witnesses instead of MSNBC stars and stars of miniseries.

You know—and, Mr. Dean, I'd say in 1979, when you were played by Martin Sheen, that was great. In 1995, you were played by David Hyde Pierce. That's a little bit of a step down there. And in 1999, Dick, you were played by Jim Breuer from Saturday Night Live. I hope there's not another remake of that because I don't know where you go after that.

But I want to focus on some of the statements that have been made about Volume I. You know, if we were really doing the work of the people here, we would be focused on Volume I and how to stop Russian interference in our election system. Instead, we're focused on, I guess, talking to some of the final people who really believe that there still is some kind of collusion.

I'll ask Ms. Vance, Professor Vance. On November 30, 2018, you tweeted: At some point, all the times he said "no conclusion" are going to come back to haunt this President.

Do you still believe that there was collusion?

Ms. VANCE. So it's important to note, as Mueller does——

Mr. CLINE. That's a yes or no. I've got 2:45 left.

Ms. VANCE. It's not a yes-or-no answer.

Mr. CLINE. Okay. Then let me go to your next tweet?

Ms. VANCE. There's a difference between collusion and conspiracy.

Mr. CLINE. I'm going to reclaim my time?

Okay. Do you believe there was conspiracy?

Ms. VANCE. Mueller finds that he has insufficient evidence to charge a conspiracy. But he also notes that much evidence was kept from him, that people took the Fifth Amendment. People lied to him. People destroyed evidence on applications like WhatsApp.

Mr. CLINE. Okay. So he didn't exonerate, but do you——

Ms. VANCE [continuing]. Notes that if he had had the opportunity to get that evidence, he might have been able to view the situation differently.

Mr. CLINE. As a former prosecutor, do you believe that it's the job of a prosecutor to exonerate the defendant, potential defendant?

Ms. VANCE. In a typical case where I'm looking at indicting a bank robber, say, or a drug case, I would agree that it's not my job.

Mr. CLINE. Okay. On July 6, 2018, you tweeted: The President is sowing hatred, fear, and distrust in hopes he can divide the country enough to survive when the truth comes out about his campaign's collusion with Russia.

Do you believe the truth has come out about the President's collusion with Russia and that there is none?

Ms. VANCE. Again, I think that there's an enormous difference between collusion and conspiracy. There is evidence of a lot of contact, a lot of welcoming with open arms by this President, cooperation and help on the campaign from Russia. So the American people should read Volume I of the report and draw their own conclusions about what that gap is between collusion and Mueller not having sufficient evidence to charge a conspiracy.

Mr. CLINE. On January 8, you tweeted video clips of people saying no collusion have not aged well. I would argue that these tweets have not aged well.

And, with that, I would yield to the gentleman from Ohio.

Mr. JORDAN. I thank the gentleman for yielding.

Mr. Malcolm, I have the appointment of Special Counsel Mueller, the 1-page document, that makes it happen on May 17, 2017, signed by Rod Rosenstein.

In there, he says, the last point, item D, section 600.4 through 600.10 of title 20 of the Code of Federal Regulations are applicable to this special counsel. And 600.8(c) says this: At the conclusion of the special counsel's work, he or she shall provide the Attorney General with a confidential report explaining the prosecution or declination decisions reached by the special counsel.

As I read that, it seems to me that the special counsel was either supposed to prosecute or decline to prosecute—not say "I can't decide"; not say, "I can't decide because there's an OLC opinion at the Department of Justice." He's supposed to pick one or the other.

Do you read it that way?

Mr. MALCOLM. Yes, I do.

Mr. JORDAN. And you said that in your testimony—I think—I don't know if you said that in your statement. But in your written testimony, you said it was the duty of the special counsel to provide the Attorney General with a confidential report explaining what I just read, the prosecution or declination decision reached by the special counsel.

Do you think Robert Mueller failed to do his duty in making a decision?

Mr. MALCOLM. That is my opinion.

Mr. JORDAN. Okay.

With that, I yield back, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

The gentleman from California, Mr. Swalwell.

Mr. SWALWELL. Thank you, Mr. Chairman.

And before continuing, I would like to ask the witnesses to direct their attention to what's referred to as slide 7. It's a timeline. It goes from June 14, 2017, with an NBC News story saying "Trump being investigated for possible obstruction of justice." And then it goes through various tweets from the President, including, on June 15, "You are witnessing the single greatest witch hunt in American political history led by some very bad and conflicted people," to a

June 17 story of Trump directing McGahn to fire the special counsel. On June 19, Trump dictates to former campaign manager: Deliver a message to the Attorney General directing him to not investigate Trump.

Concluding on the 6th of December with Trump pressuring the Attorney General, special counsel to protect Trump and shield the President from the ongoing Russia investigation.

And just going back, Professor McQuade, to Mr. Cicilline's questioning, how do you interpret the directives to Corey Lewandowski by the President? What was your interpretation of that type of behavior and directive?

Ms. MCQUADE. Directing Corey Lewandowski to go see Attorney General Jeff Sessions and ask him to take an unethical act in unrecusing himself strikes me as a matter that would go even consistently with Mr. Malcolm's theory and Attorney General Barr's theory beyond the scope of executive powers. He is acting outside by asking a private citizen to persuade Attorney General to unrecuse himself and to limit the scope of the investigation to only future elections is obstruction of justice under any theory.

Mr. SWALWELL. The report concluded the President's efforts towards Sessions were because he believed Sessions would shield the President from the ongoing Russia investigation.

Ms. Vance, looking at the timeline, can you give us your reactions to this portion of the Mueller report?

Ms. VANCE. Something that we've talked about is the need to look at the entirety of the facts. You know, we want to focus on these 10 events and determine whether there's any misconduct because, as Congress, you all need to look at that.

Also, though, as we look at this timeline because this really blends two of the acts that we've been talking about, this effort by the President to fire the special counsel but also this effort to get Attorney General—then Attorney General Sessions to unrecuse and protect the President. And so these acts put together really show us a great level of intent.

You know, I would make the point, Representative Swalwell, that when we reach the end of this, we essentially have a President who is saying: Maybe I robbed some banks in the past, but I don't want you to look at that, Mr. Attorney General. I just want you to investigate whether I rob any banks in the future.

And when we put it in those terms, I think that pops this into a little bit of relevance for us.

Mr. SWALWELL. Page 97 of Volume II summary says, quote: Taken together, the President's directives indicate Sessions was being instructed to tell the special counsel to end the existing investigation into the President and his campaign with the special counsel being permitted to, quote, move forward with investigating election meddling for future elections.

Mr. Dean, do you agree with that interpretation by the special counsel, and why?

Mr. DEAN. Well, it's—I think what the special counsel is saying, and what the President's asking for, is to—as was said by former U.S. Attorney Vance, is an effort to end the investigation into President activity and to pretend like they would focus on future activities when there's no basis for that.

Mr. SWALWELL. Mr. Dean, since the Nixon administration, have you witnessed any future administration commit more obstruction crimes than the Nixon administration? Yes or no?

Mr. DEAN. No.

Mr. SWALWELL. You would submit that, in your view, the Nixon administration, compared to every administration after, committed the most amount of obstruction crimes you've witnessed?

Mr. DEAN. No. I gave a few samples in my written statement, and there are—probably books will be written comparing these two——

Mr. SWALWELL. I'm sorry. Let me rephrase the question.

Comparing Nixon to just any future administration, would you say there was a future administration that committed more crimes than the Nixon administration as far as obstruction?

Mr. DEAN. I would say the Trump administration is in fast competition with what happened to the Nixon administration.

Mr. SWALWELL. I would like to thank all of the witnesses for participating, especially Mr. Dean, Professor Vance, and Professor McQuade. Your voices have been very important voices as our fragile democracy has been tested. And coming here today has laid out the foundation for our country as to what's at risk. You know, it's often said that history doesn't repeat; it rhymes. And we are hearing many of those rhymes today.

And I would yield back.

Chairman NADLER. The gentleman yields back.

The gentleman from North Dakota, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

We've heard several times today that we have to examine all of this and the totality of the circumstances. And I also would encourage everybody to read Volume I. I'd encourage everybody to read the report. I'm on, like, my fourth time through it. I will admit I'm doing it by audio book now. Well, I get to drive a lot in North Dakota.

But I think how the witnesses—the tepidness to the answers regarding Volume I of the report speak volumes about where we're at in relation to this—in relation to this report. There's 22 months, 2 years, hundreds of hours investigated, and all started under the basis of collusion. We've read some tweets from some of our witnesses, and those things. And we get to the point, and there is no collusion or conspiracy, which is the legal version of what collusion would be in this example. And I think that's important. Not a single member of President Trump's family has been indicted. The indictments that actually came out of the Mueller investigation, with the exception of 25 Russians, which is purely symbolic, because we're never going to get those indictments served, are unrelated financial crimes, tax fraud, campaign finance, lying to Congress—only once, not twice; we haven't brought Mr. Cohen in for the second time of lying to Congress yet—identity threat, failure to register as a lobbyist, and conspiring to violate lobbying laws, and then several obstruction and lying to investigators. And I've read all of those lying to investigators charges as well.

So I guess my question for Mr. Malcolm, when we are talking about dealing with this and the totality of the circumstances, how

important is not having the underlying crime of conspiracy when we look at these—or when we look at these obstruction charges?

Mr. MALCOLM. Well, I certainly think it's a very important factor in terms of what would motivate the President to do what he did. He was being bedeviled by allegations that he knew to be false. And it was casting a poll upon the legitimacy of this President and impeding his ability to govern.

He had no problem looking into Russian interference in the election. I disagree, with all due respect, to the characterization by Professor McQuade, about what he was asking Bob Mueller to do. But he clearly wanted Jim Comey to say that he wasn't involved in any kind of conspiracy or collusion, and he was frustrated by the ongoing cloud over his Presidency.

Mr. ARMSTRONG. And then just for question, if Mr. Trump wanted to fire Bob Mueller, could he have—President Trump fire Bob Mueller, could he have done it at any time?

Mr. MALCOLM. Sure.

Mr. ARMSTRONG. If he wanted to fire Jeff Sessions, could he have fired him at any time?

Mr. MALCOLM. Yes.

Mr. ARMSTRONG. If he wanted to fire Bob McGahn, could he have fired him at any time?

Mr. MALCOLM. Certainly could.

Mr. ARMSTRONG. Okay. So—and as we're dealing with endeavor—which "endeavor" is really just attempt. I mean, it's—endeavor to obstruct is the same as an attempt at crime. And when we typically deal with attempt, we deal with it, and it's important that we have it, because if I determine I'm going to rob a bank or I'm going to murder somebody, there are underlying factors that could cause me to not complete that action. You would agree, right?

Mr. MALCOLM. Yes. I mean, you have to look at what people do. You also have to consider what they say. But venting is venting. And this a President who likes to vent. But you look at what he does. And, in fact, he did not do any of the things that, you know, he was talking about doing.

Mr. ARMSTRONG. And then, even more so, when we walk through with the people who he was venting to, none of them—as far as the Mueller report is concerned, none of them really appeared to have any consequences as well, did they?

Mr. MALCOLM. That is correct. Even people who knew that he was venting and didn't do what he asked them to do.

Mr. ARMSTRONG. Now, I'm going to—and I just want to walk through—I would love to walk through each—actually, one of the obstruction charges. But have you read Inspector Horowitz' inspector general report as it related to the Clinton administration and the FBI?

Mr. MALCOLM. It's been a while, but yes.

Mr. ARMSTRONG. And you would agree that a ton—Mr. Horowitz found a ton of bias and impure acts or at least thoughts. I mean, we have text messages—some of those are salacious, have made the news—conducted by the FBI agents, right?

Mr. MALCOLM. Regrettably he did.

Mr. ARMSTRONG. But in his final conclusion, he has—he—I mean, he basically asserted that, because—while there may have

been a potential impure thought, there were also legitimate reasons for why they were conducting that action. So he didn't hold—he didn't recommend any real true accountability to the FBI agents at that point, right?

Mr. MALCOLM. Yeah. Inspector General Horowitz looked at the realm of reasonable decisions made by the investigators and prosecutors. And whenever possible, he gave them the benefit of the doubt. Sometimes he just couldn't because of the conduct involved.

Mr. ARMSTRONG. And I guess that's just my overall general question. When you're dealing with some of these issues, if you have illegitimate reasons and legitimate reasons and you have no underlying crime, how do you prove the intent?

Mr. MALCOLM. That is precisely the danger here because you are talking about trying to determine what is an illegitimate or legitimate motive for core Presidential discretionary actions. It's easy to do in the face of facially criminal conduct such as paying a bribe or witness tampering or threatening a witness, but not with respect to the actions the President undertook here, whether you like them or not.

Mr. ARMSTRONG. And then I'll just end with, we've been talking about tweets that age well or don't age well. This is a tweet from our President on June 15th of 2017: They made up a phony collusion with the Russian story, found zero proof, so now they go for obstruction of justice on the phony story. Nice.

So, with that, I'll yield back.

Chairman NADLER. The gentleman yields back.

The gentleman from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair.

So let's talk about Jeff Sessions' recusal. As is well-known, then Attorney General Jeff Sessions, following the advice of the Department of Justice ethics officials, recused himself on March 2, 2017, from investigations related to 2016 Presidential elections.

Page 51 of the report goes on to detail a meeting between the President and the Attorney General. And it says, quote: That weekend, Sessions and McGahn flew to Mar-a-Lago to meet with the President. Sessions recalled that the President pulled him aside to speak to him alone and suggested that Sessions should unrecuse from the Russia investigation.

So a former prosecutor, Joyce White Vance, what do you make of that?

Ms. VANCE. Recusal is not a question that the Justice Department considers infrequently. Recusal, conflict concerns come up in all sorts of situations. Maybe as a prosecutor, you knew someone personally or your family owned stock in a bank. So you recuse from that case. And when those situations come up, the prosecutor's obligation is to go to the office in the Justice Department that considers those concerns and gets advice. That's what Attorney General Sessions did. That was a dispositive conclusion that he had conflicts that meant that he could not be involved in any cases that were looking into the 2016 elections.

So this request from the President, that he revisit that, it's not just improper; it's incomprehensible. There is no such thing as unrecusal.

Mr. LIEU. Thank you.

Former Prosecutor McQuade, you were also a U.S. attorney. Is that correct?

Ms. MCQUADE. Yes.

Mr. LIEU. All right. Per the Department of Justice rules, is Attorney General or other personnel allowed to unilaterally unrecuse themselves?

Ms. MCQUADE. No. There's no such thing as unrecusal. Think of it as he was tainted. A determination was made that he can be the Attorney General for many other cases but not this one. Because of his political connections to President Trump, he correctly asked them to assess whether he could serve as Attorney General over this matter. They studied the matter and concluded that he could not, that he was tainted and he was unable to handle this case.

And so to unrecuse oneself would be to ignore the taint and to commit an unethical act.

Mr. LIEU. Thank you.

Page 78 of Volume II of the report says, and I quote: When Sessions told the President that a special counsel had been appointed, the President slumped back in his chair and said, "Oh, my God. This is terrible. This is the end of my Presidency. I'm fucked." The President became angry and lambasted the Attorney General for his decision to recuse an investigation stating, "How could you let this happen, Jeff?" Sessions recalled that the President said to him, "You were supposed to protect me," or words to that effect.

Mr. Dean, understanding what occurred in Watergate and your experience, do you believe it is the role of Attorney General to protect the President?

Mr. DEAN. That certainly wasn't the case during the Nixon Presidency. As a former employee of the Department of Justice that served—where I served as the Associate Deputy Attorney General, I know there's a proud and professional workforce at the Justice Department that doesn't do anything other than represent the American people. I don't think the Attorney General—his task is to represent the President.

John Mitchell, who was the initial Attorney General, followed by Richard Kleindienst, and then former Senator Saxby and Elliot Richardson, I really don't think they looked upon their job as to represent Richard Nixon. So this is a sort of unprecedented view from Mr. Trump as to what the Attorney General should and should not be doing.

Mr. LIEU. Thank you.

Former U.S. Attorney General McQuade, what is your understanding of the role of the Attorney General?

Ms. MCQUADE. The Attorney General is the lawyer for the people of the United States. He is to support and defend the Constitution, and he is to represent the people. He is not the personal attorney for the President.

Mr. LIEU. Thank you.

Page 107 of Volume II of the report documents some point after May 17, 2017, appointment of the special counsel, Sessions recalled that the President called him at home and asked if Sessions would unrecuse himself. According to Sessions, the President asked him to reverse his recusal so that Sessions could direct the Department of Justice to investigate and prosecute Hillary Clinton. And the gist

of the conversation was the President wanted Sessions to unrecuse from all of it, including the special counsel's Russia investigation.

So former U.S. Attorney McQuade, what is your reaction to that phone call?

Ms. MCQUADE. It demonstrates to me that President Trump was persistent in his efforts to get Attorney General Sessions to unrecuse himself because he was so desperate to limit the scope of the investigation. He was concerned about a number of things. I know that the Congressman said if there's no underlying crime, then there's nothing to cover up. But I disagree with that.

Number one, it's a matter of law that's not correct. But President Trump knew that there were a number of things that could be exposed about him. The payment of hush money that caused him to be named as individual one as an unindicted coconspirator in the Southern District of New York, the meeting at Trump Tower with Russians that, but for definitions of willfulness and thing of value, could have amounted to a crime. The conversations with WikiLeaks, all of those things, I believe, were matters that were—are collusion and could have concerned President Trump about discovery and exposure.

Mr. LIEU. Thank you.

I yield back.

Chairman NADLER. The gentleman yields back.

The gentleman from Florida, Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

You know, it's fascinating to me that the majority brings in Michael Cohen, a convicted liar, who lied to Congress as a witness. And now the majority brings in Mr. Dean, who's convicted of obstructing justice and is paid by cable networks and others, to opine against the President. So, instead of legitimating Mr. Dean's presence here today, I'll ask my questions to Mr. Malcolm.

Mr. Malcolm, isn't it true that the President could have exerted executive privilege and prevented Mr. McGahn and others from cooperating with the special counsel?

Mr. MALCOLM. Yes.

Mr. STEUBE. And, in fact, not only did he encourage Mr. McGahn to cooperate, he allowed 20 White House officials to testify, including 8 people from the White House Counsel's Office?

Mr. MALCOLM. Correct.

Mr. STEUBE. Isn't it true that the President has full constitutional authority without reason to fire the FBI Director at any time?

Mr. MALCOLM. Yes.

Mr. STEUBE. So how would it be obstruction to fire an FBI Director?

Mr. MALCOLM. I don't think it was.

I would also point out that the report also indicates that others within the intelligence community and Attorney General Sessions himself had suggested that the President ought to do that before the President decided to do it.

Mr. STEUBE. Isn't it also true that if the special counsel had decided on the question of obstruction, he could have stated that there was evidence the President committed obstruction and rec-

ommended that he be charged with obstruction and not kick the decision to the AG?

Mr. MALCOLM. He could have done that, yes.

Mr. STEUBE. And he could have recommended any form of charges that he wanted to recommend including if he had found anything on Russian collusion or conspiracy or any of the manner?

Mr. MALCOLM. While recognizing that it would not result in an indictment, he could have said the evidence was there to convict the President if he could be charged, yes.

Mr. STEUBE. Which he did not.

Mr. MALCOLM. He did not.

Mr. STEUBE. He kicked the decision to the Attorney General of the United States who said, and I quote: There's not sufficient evidence to establish the President committed an obstruction of justice offense.

Mr. MALCOLM. That's correct.

Mr. STEUBE. Could you walk me through—as an attorney who spent a number of years practicing in the courtroom and having numerous clients, could you walk me through the chilling effects that this is all having on future Presidents having honest and open and frank conversations with their White House general counsel?

Mr. MALCOLM. Presidents engage—one, they solicit advice. Sometimes the advice that they're seeking is to do something stupid. Sometimes it may even be to do something illegal. That's why they have these conversations and get advice from trusted people.

What this suggests is that, by even having the conversation or saying something publicly or privately about it, one could be subjected to criminal liability. There are all sorts of actions that a President might take that might be aggressive, some of which are covered in the Mueller report with respect to appointing certain executive branch officials, firing certain executive branch officials, considering issues, certain pardons, engaging in executive orders, invoking the Take Care clause of the Constitution to actually involve one's self in an ongoing investigation if he thinks it's being unfairly conducted. All of those things can either be legitimate or illegitimate, depending on one's motives. And it would chill a President, I would think, to the bone, to think that some prosecutor is going to be the person who is going to be making the determination about which action is legitimate, which is illegitimate, whether this was a mixed motive, a pure motive, or an improper motive. The mere fact that that inquiry could take place would have a chilling effect, which is why there is no clear statement that this obstruction of justice law should apply to the President and which is why the independent counsel should have focused on facially illegal acts.

Mr. STEUBE. Well, you said it better than I could have said it. I just think that—I don't care if you're a Republican or a Democrat. I think if you're going to be in the White House in the future, that all of this is going to have—weigh on whoever that President may or may not be. And the decisions that he makes about having frank and open conversations with his counsel, who he should be able to have very private thought process, "What do you think about this," in confidence knowing that the White House general counsel isn't going to be subpoenaed to testify about very conversations that

they had about what is going on in the White House. And so I thank you for your testimony here today.

And I will yield the remainder of my time to Mr. Jordan.

Mr. JORDAN. Mr. Malcolm, just let me go back to where we were a few minutes ago.

In the Mueller report, it says: Our report does not conclude that the President committed a crime. It also does not exonerate him.

I'm trying to figure out how that squares with title 28 of the Code of Federal Regulations impacting special counsels where we read before: The Attorney General shall provide a confidential report explaining the prosecution or declination decisions.

Mr. MALCOLM. Well, I don't think that it does. In addition to the fact that I don't think it is any proper standard for any prosecutor to decide whether or not somebody has been exonerated. That's not the role of a prosecutor. It's not even a role of a jury. If a jury comes back and acquits somebody, it just says that they weren't found to be guilty beyond a reasonable doubt, not that they were factually innocent.

Mr. JORDAN. And it specifically says—when you read the section of title 28, it specifically says "the prosecution or declination decision reached by the special counsel." It doesn't say you don't have to decide at all. It says you got to pick one. And yet in his report, he says: Our report does not conclude either than way.

Mr. MALCOLM. I read it the same way you do.

Mr. JORDAN. Okay. Now, why was he able to reach a decision on one and not the other?

Mr. MALCOLM. That, you would have to ask him. He obviously felt comfortable with the state of the evidence. My guess is that his team was conflicted as what to do. But that's reading tea leaves, and I don't read tea leaves very well.

Mr. JORDAN. All right. My time's expired.

I thank the gentleman for yielding.

Chairman NADLER. The gentleman yields back.

The gentleman from Maryland, Mr. Raskin.

Mr. RASKIN. Thank you, Mr. Chairman.

Mr. Dean, President Trump's National Security Advisor, Michael Flynn, pled guilty to making false statements to the FBI under 18 U.S.C. 1001 and has been cooperating with Federal law enforcement investigators. He resigned on February 13, 2017.

Page 40 of the report documents an Oval Office meeting in the afternoon between the President and FBI Director Comey where, and I quote, The conversation turned to the topic of leaks of classified information, but the President returned to Michael Flynn saying: He is a good guy, and he's been through a lot.

The President stated: I hope you can see your way clear to letting this go, to letting Flynn go. He's a good guy. I hope you can get let it go.

Now, what do you think was taking place in that conversation?

Mr. Dean. Well, the only parallel I can draw in my mind to past Presidents is what happened on June 23rd of 1972 when H.R. Haldeman came in to the President to talk about the fact that people from his reelection committee were involved. And the President heard the chief of staff out and instructed him at the end of the conversation to have the CIA tell the FBI to stop its investigation.

Mr. RASKIN. Ms. McQuade, what is your reaction to this exchange that I just quoted?

Ms. MCQUADE. Similar to what Mr. Dean just said. And I think it goes to something that Mr. Malcolm has said as well, which is that, you know, we can never allow prosecutors to second-guess the decisions of Presidents. But I think that writes out of the Constitution the word "faithfully," to faithfully execute the laws. Just as President Nixon was facing articles of impeachment for ordering the CIA to direct the FBI to stop investigating Watergate, similarly, President Trump's directive to let it go with Mr. Flynn was the same kind of corrupt act that is obstruction of justice. Even if he can't be charged criminally, this body has the ability to hold him accountable.

Mr. RASKIN. And, indeed, when one of our colleagues says that it's up to the President to determine whether or not he faithfully executed the law, that's clearly wrong in a constitutional sense. It's up to Congress to determine whether the President faithfully executed the law. Isn't that right?

Ms. MCQUADE. Of course. Otherwise, it would render invalid the checks and balance that are the hallmark of our system.

Mr. RASKIN. Thank you.

Ms. Vance, what's your reaction to that seeing where President Trump urged FBI Director Comey to drop the investigation against Michael Flynn and then ended up firing FBI Director Comey afterwards?

Ms. VANCE. So, you know, let me just be candidate and tell you that I don't include that as one of the instances which I think qualifies for charging based on what we know at this point. The intent question is a little bit sticky. It's possible that the evidence there is there. Perhaps it's not. But what it does tell us is a great deal about the President's state of mind and what he was focused on doing.

So there's this sequence of events where the President fires Director Comey, and then goes on national television and acknowledges that he did it because Russia was on his mind, and finally has a conversation in the Oval Office with folks from Russia, with Russian Government officials, where he tells them like he feels he's out from under the pressure of the investigation.

So, as we consider all of the circumstances that we're looking at in Volume II, what's clear is that, even at this early point in time, the President was focused on not letting this investigation move forward.

And this really plays into this conversation that we've had a little bit about whether or not you have to have an underlying completed crime for obstruction. What's going on here is maybe there's a crime, maybe there isn't. The President doesn't know at this point in time. But he wants to shut down the investigation in case there is one. And that's why, under our Criminal Code, obstruction doesn't require an underlying crime.

Mr. RASKIN. Well, isn't it the case that people get prosecuted for obstruction of justice even if they're not prosecuted for the underlying offense?

Ms. VANCE. That's true. That happens. And there's also a case cited in the Mueller report that comes from my own district where

a defendant was charged with two counts of obstruction but also with other crimes. On appeal, those underlying convictions didn't hold up, but the court let the obstruction conviction stand alone.

Mr. RASKIN. Mr. Dean, I want to come back to you for a moment.

You and I are from different political parties. Indeed, you were the chief Republican counsel of this committee. You were the White House counsel for a President who put my father on his enemies list. My father was an official in the Kennedy administration and had a lot of problems with the Nixon administration. And so growing up, we were very fearful about the Nixon White House and what they would do to people. But you are clearly a man of honor and a man of integrity and a man who's standing up for the truth. And I wonder if you'll just tell us why you have decided at this point in your career to come forward to talk about what is taking place in America and in the Trump White House.

Mr. DEAN. Well, Congressman, I can remember when working for this committee back in the 1960s, this committee did an awful lot of good things. For example, when I was here, there were amendments made to the 1964 Civil Rights Act. There was the 1965 Voting Rights Act. There was the 18-year-old vote. There was the 25th amendment. A lot of activities. And it required both Republicans and Democrats to work together.

This was a wonderful place to start a career in government working for this committee. I'm not so sure today. There's too much polarization. You sense it in the questioning sitting here and the shots that get taken at witnesses.

So what brought me forward was the invitation, in this instance, where I thought, yes, I can share with particularly a lot of the people who were on this committee were either not either born or they were very young when Watergate occurred. And it's quite striking and startling to me that history is repeating itself, and with a vengeance, so that's why I've spoken out.

Mr. RASKIN. Thank you very much.

I yield back, Mr. Chairman.

Ms. SCANLON [presiding]. The chair recognizes the gentlewoman from Arizona.

Mrs. LESKO. Thank you, Madam Chair.

Mr. Malcolm, I'm first going to read some excerpts from the Mueller report and then ask you to comment on them, if you don't mind.

Special counsel Robert Mueller is a prosecutor, and yet he did not—not—recommend obstruction of justice charges against the President. And as has been said before by Ranking Member Collins, there was a joint statement by the special counsel and Department of Justice that says the Attorney General has previously stated that the special counsel repeatedly affirmed that he was not saying that, but for the OLC opinion, he would have found the President obstructed justice.

So let me again talk about some particular excerpts. And after reading the Mueller report, it was clear to me that Mueller knew that he may not have a clear case that could hold up in court. And, in fact, he said: The evidence we obtained about the President's actions and intent presents difficult issues that would need to be resolved if we were making a traditional prosecutorial judgment,

namely, A, the President has Article II authority, and the acts the President engaged in are all exercises of the constitutional powers given to a President; B, second, there was no underlying crime. It would be almost impossible, I believe, to prove corrupt intent, which is required in the obstruction statutes.

And Mueller himself said: Unlike cases in which a subject engages in obstruction of justice to cover up a crime, the evidence we obtained did not establish that the President was involved in an underlying crime.

He goes on to say: The absence of that evidence affects the analysis of the President's intent and requires consideration of other possible motives for his conduct.

And then he further says: The term "corruptly" sets a demanding standard.

Then, C, Mueller report says many of the President's acts took place in public view.

So, with all those excerpts right from the Mueller report and the words of Mueller himself, what do you think about my conclusion that he thought maybe this couldn't hold up in court and that's why he didn't do the charges?

Mr. MALCOLM. Well, I certainly agree that any prosecutor who would consider bringing an obstruction of justice charge would weigh heavily whether or not the person who was alleged to have attempted to obstruct justice had engaged in the underlying criminal activity under investigation.

And in light of the fact that the President did not engage—or any of his campaign team—engage in that activity, he had all sorts of legitimate reasons to be upset by this probe and what it was doing to his ability to govern.

And so you can like the President's conduct or not like the President's conduct. I don't think anybody here likes what the President does all the time. That would probably be an understatement. But whether he had a legitimate beef that caused him to do what he do—what he did goes to the issue of whether or not he had a corrupt intent.

Mrs. LESKO. Thank you, sir.

My next question is for Ms. McQuade.

In a January 2nd Newsweek article, you said: I think this case is far worse than Watergate.

You said: I think this case is far worse than Watergate because it didn't just involve a burglary to intercept communications of your rival. It included allegedly and potentially a conspiracy to collude with an adversary, Russia.

Obviously, you were wrong that there was conspiracy or collusion with Russia. Do you admit to that?

Ms. MCQUADE. I agree that Robert Mueller concluded that he could not establish the technical crime of conspiracy. However, I do think it was worse than Watergate. I think this President worked with Russia. The report says that the investigation identified numerous links between the Russian Government and the Trump campaign. It also says that the investigation established that the Russian Government perceived that it would benefit from a Trump Presidency and worked to secure that——

Mrs. LESKO. Ma'am, I'm reclaiming my time because I only have 25 seconds left.

Ms. Vance, on July 6, 2018, you tweeted: "Dangerous" is the right word. The President is sowing hatred, fear, and distress in hopes he can divide the country enough to survive when the truth comes out about his campaign's collusion with Russia.

Well, the special counsel's team wasn't able to find collusion between the Trump campaign and Russia, but apparently you did.

What is it that you knew that the special counsel didn't know or didn't conclude on after 22 months, 2,800 subpoenas, 500 bench warrants, 40 FBI officers, and multiple attorneys?

Ms. VANCE. So Mueller, in his report, is careful to clarify that he's not making any decision about collusion. He's making a decision about whether or not he has evidence to indict the crime of conspiracy. A conspiracy is an agreement in an overt act, in furtherance of that agreement, and Bob Mueller didn't find that there was evidence of that here. That is a far cry from saying that there was no evidence of collusion. There's abundant evidence of collusion in this record.

Mrs. LESKO. And, you know, to me, it's clearly evident that each one of these Democrat witnesses that is before us today has had multiple previous statements publicly bashing the President of the United States, and it's really hard for me to take your testimony, that it's not biased.

Thank you. I'll yield back my time.

Ms. SCANLON [presiding]. I recognize the gentlewoman from Washington.

Ms. JAYAPAL. Thank you, Madam Chair.

Let me go now to the question of discouraging cooperation with Federal law enforcement investigators by the President or his associates. The report documents multiple instances where associates of the President communicated with subjects or witnesses of the special counsel investigation and other investigations, potentially with the goal of discouraging cooperation. And as I go through these events, let me refer you to the displayed slide over here.

On page 124 of Volume II, the report begins to document public statements by Rudy Giuliani, the President's private attorney, relating to former Trump campaign chairman Paul Manafort. Quote, Immediately following the revocation of Manafort's bail, the President's personal lawyer, Rudolph Giuliani, gave a series of interviews in which he raised the possibility of a pardon for Manafort. Giuliani told the New York Daily News that when the whole thing is over, things might get cleaned up with some Presidential pardons.

It continues on page 127 of Volume II, quote, Giuliani told journalists that the President really thinks Manafort has been horribly treated and that he and the President had discussed the political fallout if the President had pardoned—if the President pardoned Manafort. The next day, Giuliani told The Washington Post that the President had asked his lawyers for advice on the possibility of a pardon for Manafort and other aides and had been counseled against considering a pardon until the investigation concluded.

Mr. Dean, you had spoken about the question of Presidential pardons in your opening statement. What is your reaction to Giuliani's statement?

Mr. DEAN. Well, first of all, I've been waiting for his response to this report which he promised—had been drafted before it had been written, which has not been forthcoming. So we don't have any formal answer from him on these issues, but it's really quite surprising. He certainly knows the history of Watergate. He knows that Nixon got in trouble because of his dangling pardons. So this is pretty shocking material, but not surprising, because we heard it publicly when it was occurring and, of course, the special counsel has included it.

Ms. JAYAPAL. And, Professor Vance, as a former U.S. attorney, do you think public statements like that influence criminal defendants?

Ms. VANCE. Obviously, they do. And, you know, the interesting thing here is that usually when as a prosecutor you're looking at an obstruction of justice case, it's not public statements, right? Obstruction usually happens under the cloak of darkness. You're trying to conceal it. But Mueller explicitly considers that and finds that public obstruction can still be obstruction. Everybody sort of shakes their head and wonders why you're doing it out in public. Maybe you think that if you're doing it in public, it's somehow okay, but it's not okay. And we see these statements and we see their impact and we know that they do impact witnesses.

Ms. JAYAPAL. So let me continue. On page 127, the report says, quote, Giuliani was reported to have publicly said that Manafort remained in a joint defense agreement with the President following Manafort's guilty plea and agreement to cooperate and that Manafort's attorneys regularly briefed the President's lawyers on the topics discussed and the information that Manafort had provided in interviews with the special counsel's office. On November 26, 2018, the special counsel's office disclosed in a court—public court filing that Manafort had breached his plea agreement by lying about multiple subjects.

So, Ms. McQuade, what is your reaction to the evidence that Manafort lied, but also was briefing the President's private legal defense team after agreeing to cooperate with Federal investigators? Is that common practice for defendants? And why was that behavior, Manafort's behavior, so concerning to the court?

Ms. MCQUADE. No, that is not common behavior. If you enter into a cooperation agreement, people sometimes even make the reference, is you've joined team USA. You are going to cooperate, you are going to provide information to us. And the idea that you're taking information from the investigators, insights into their investigation, and sharing it with the defense, with the other side, is antithetical to a cooperation agreement. I can understand why at that moment, they decided to tear up that agreement.

Ms. JAYAPAL. So on page 131, the report summarizes the evidence related to Paul Manafort. It says, With respect to Manafort, there is evidence that the President's actions had the potential to influence Manafort's decision whether to cooperate with the government. Page 132, Evidence concerning the President's conduct to-

wards Manafort, indicates that the President intended to encourage Manafort to not cooperate with the government.

Ms. McQuade, do you agree and why?

Ms. MCQUADE. There is certainly evidence to support that. There are numerous tweets about being strong, not flipping. There were tweets about being a rat when you cooperate. And so looking at all of those things, it suggests that he was encouraging Paul Manafort to not cooperate with the government and continue to support him. And as someone who is so powerful, the President of the United States, who holds the pardon power, can deliver that message in a way that none of us otherwise can.

Ms. JAYAPAL. Thank you so much to all of you for your testimony, and I hope that the American people watching this understand how important this report is and how essential it is to actually read the whole thing, from front to back.

Thank you, Madam Chair, I yield back.

Chairman NADLER [presiding]. The gentlelady yields back.

The gentleman from Louisiana, Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chairman. And, Mr. Chairman, sincerely, I want to thank you for returning "so help me God," the phrase, to the oath today to the witnesses. As we've discussed, that's an important tradition the American people want us to maintain.

Let me ask a few questions, Mr. Dean. First, a housekeeping matter. When were you first contacted about testifying at this hearing?

Mr. DEAN. I'm sorry, about this hearing?

Mr. JOHNSON of Louisiana. Yes, sir.

Mr. DEAN. Probably a couple weeks ago. I was initially told it was planned for the 20th, and then later it had been moved to the 10th.

Mr. JOHNSON of Louisiana. We're just curious. We only got exactly 7 days' notice, and we had suspected this had been in the works for a while.

On November 7, 2018, when Attorney General Sessions resigned, you went on CNN and you said, quote, This seems to be playing like a murder. It's almost impossible not to interpret this any other way than a fact to undercut Mueller, unquote. Of course, now we know that didn't happen. The special counsel was allowed to finish his investigation, and the Attorney General—or Deputy Attorney General never declined any requests made by the special counsel.

So based on that statement, would you now admit that maybe you overstated the effect of the AG's resignation?

Mr. DEAN. Well, what I was looking at was the fact that Mr. Whitaker was stepping in as an Acting Attorney General, which was highly unusual, and that's why I made the comment I did. I think that when Mr. Whitaker got in there, he found the institution is much different than that of a U.S. attorney's view of it, that it is a—there's a lot of spine inside the main Justice Department, and it was not something he could possibly carry out any assignments that he might have thought he could handle. So, no, I wouldn't change my comment.

Mr. JOHNSON of Louisiana. Okay. You also said in that same interview you believe Special Counsel Mueller had filed sealed in-

dictments against the President's children and others that you said, quote, high—were high in the pecking order at the White House. But there weren't any such indictments.

Mr. DEAN. Did I say they had been filed—or that was a potential, I believe is what I said.

Mr. JOHNSON of Louisiana. I think you said they had been filed, but I'll give you that. That didn't happen, though, did it? Would you admit——

Mr. DEAN. No, it didn't.

Mr. JOHNSON of Louisiana [continuing]. You were wrong about that?

Mr. DEAN. Well, I—if I—my recollection being it was there was the potential of it. I'd have to look at the transcript of the broadcast you're talking about.

Mr. JOHNSON of Louisiana. Mr. Malcolm, really appreciate you being here today. Your legal experience and your expertise on the matter before the committee have been very valuable to us. Couple questions for you.

Many of the acts of alleged obstruction involve the President exercising his Article II authority that you've articulated very well today. Can you just explain the difficulty, quickly, in finding corrupt intent to obstruct justice when a President is carrying out those Article II powers?

Mr. MALCOLM. Well, you have to be able to determine that it was done for an illegitimate purpose, that it was done to be purely self-serving and outside of the scope of the President's duties. And when a President is undertaking discretionary actions that are covered by Article II, which vests certain powers and duties in him, it is a very dangerous inquiry to go and look at and say, well, did he appoint this person because he's a crony? Did he appoint this person because he's going to do his bidding? Or did he appoint them on the merits? When he got—when he dismisses somebody, did he dismiss somebody because they were going to find some shenanigans that he was engaged in, or did he dismiss him because he was incompetent, or did he dismiss him for all sorts of other reasons?

Any time—a President will be chilled at the thought that when he engages in these actions, a prosecutor, again perhaps a politically motivated one, is going to be plumbing his mind to try to figure that stuff out, and, you know, it just—it treads on separation of powers concerns that are quite, quite real. When he's bribing somebody or illegally wiretapping somebody or threatening witnesses or suborning perjury, facially illegal acts, there is never a proper motive to do any of these things.

But with respect to all of the things that I just talked about, and which are many of the things that Special Counsel Mueller looked at, they can be done for all kinds of motives, both proper and improper.

Mr. JOHNSON of Louisiana. Very good. One more question. If this committee were to go to court to enforce the subpoena for the full unredacted Mueller report, at this point in the process, how do you think you would assess the merits of that lawsuit?

Mr. MALCOLM. Well, at the moment, I believe that this committee would lose, for the very simple reason you are in the Dis-

trict of Columbia. The D.C. Circuit in a case a couple of months ago, McKeever v. Barr, determined that there are no exceptions to 6(e). Federal Rule of Criminal Procedure 6(e) governs the exceptions against—in favor of disclosing grand jury material, and, you know, disclosures to Congress are not covered by that. This committee and Congress can, of course, amend the law, if it wants to, but at the moment, the governing law in this circuit, unless and until it is overturned, is that 6(e) material is governed by the exclusions there and nothing else.

Mr. JOHNSON of Louisiana. Thank you very much.

In spite of all that's been said here today and the countless interviews and the op-eds of our colleagues and all that, here's the one key fact we want everybody to remember. The White House and the Trump campaign provided unprecedented levels of cooperation with the special counsel's investigation. They produced over 1.4 million pages of documents to the special counsel. They allowed 20 White House officials to testify, including eight people from the White House counsel's office. And in spite of all that, the Attorney General and former Deputy AG Rosenstein found the evidence developed by the special counsel was, quote, not sufficient to establish that the President committed an obstruction of justice offense, unquote.

That should've ended the inquiry, but it hasn't. We're doing these political hearings, we're wasting the American people's time. And this committee has one of the broadest and most important jurisdictions of any committee in Congress. There is critical work we need to be doing, and we're not because we're mired in this.

I'm out of time, and I yield back.

Chairman NADLER. The gentleman is out of time.

The gentlelady from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you.

Professor Vance, isn't it true that the President refused to answer any questions by the special counsel about obstruction of justice?

Ms. VANCE. You know, he did. And I think that we should point out that written questions, written responses to prosecutors' questions, which is the only thing that the President provided to the special counsel, that's just a far cry from sitting down for an interview, for all the obvious reasons. You can't have give-and-take, you can't follow up on an answer. Other Presidents have submitted to these types of interviews. Bill Clinton certainly did. This President did not, and did not on the topic of obstruction.

Ms. SCANLON. Okay. We were discussing the President's actions to influence Paul Manafort and whether or not he would cooperate with the special counsel. The report and recent court filings document similar communications regarding Michael Flynn and his cooperation with Federal investigators.

For those following along at home, the report on page 121 of Volume II says, quote, In late November 2017, Flynn began to cooperate with this office. On November 22nd, Flynn withdrew from a joint defense agreement he had with the President. Flynn's counsel told the President's personal counsel and counsel for the White House that Flynn could no longer have confidential communica-

tions with the White House or the President. Later that night, the President's personal counsel left a voice mail for Flynn's counsel.

Professor Vance, is it common practice for defense counsel to communicate in such a way with another defense counsel after a joint counsel agreement is no longer in effect?

Ms. VANCE. You know, I would actually hesitate to criticize attorneys communicating back and forth and trying to work out these circumstances. But this tape-recording that we've now had the opportunity to hear is, to say the least, extremely unusual. And this, frankly, Congresswoman, is what one of the jobs that you all, I think, have the opportunity to complete, as this conduct continues and as more evidence comes to light, to determine whether there's any conduct here that constitutes a high crime or a misdemeanor. What did the President know? Was he involved in the placement of this call? Those questions still need to be answered.

Ms. SCANLON. Okay. The voice mail recording that you referenced was recently made public through court. But I'd like to read it here, as printed on page 121 of the report, and I quote, I understand your situation, but let me see if I can't state it in starker terms. It wouldn't surprise me if you made a deal with the government. If there's information that implicates the President, then we've got a national security issue, so, you know, we need some kind of heads-up, just for the sake of protecting all our interests if we can. Remember what we've always said about the President and his feelings towards Flynn, and that still remains.

Professor McQuade, what's your reaction to the voice mail?

Ms. MCQUADE. You know, there are two statements in there that jump out at me as at least inappropriate and very concerning. One is, we need some kind of a heads-up. If his premise is true, he assumes that Michael Flynn has now agreed to plead and cooperate, that means just—the exchange we just talked about with Paul Manafort, that they want a heads-up about what's going on, what are you doing, are you cooperating, what are you telling them, what are they asking you, which I believe would be inappropriate.

And then the other part is, where he says, remember the President still has feelings toward Flynn and that remains. I think that is a suggestion that, you know, we'll take care of you if you take care of us. And so I think viewing that alone does not amount to obstruction of justice, but I think when you look at it in other contexts—and perhaps you're getting to this—it's the return call, when he calls him back and says, no, I can't do that. I can't provide you with information. And the response is, we take that as hostility from Mr. Flynn toward the President, and I'm going to tell the President, and he's not going to like that. That, coupled with what's in this message, I think, does suggest a carrot and a stick about cooperation for Mr. Flynn.

Ms. SCANLON. So page 122 of Volume II does go on to say that Flynn's attorneys understood that statement to be an attempt to make them reconsider their position because the President's personal counsel believed Flynn would be disturbed to know that such a message would be conveyed to the President.

Professor Vance, given the evidence presented in the report, do you agree with that assessment and why?

Ms. VANCE. I do agree with that assessment, and it's important to remember that we're not talking about just any individual here. We're talking about the President of the United States who's putting his thumb on the scale of the criminal justice system.

Ms. SCANLON. Finally, with respect to the President's former personal attorney and self-described fixer, Michael Cohen, on page 146 of Volume II of the report, they describe back-channel conversations between Cohen and Trump's private legal team, where they say, quote, On or about April 17th 2018, Cohen began speaking with an attorney, Robert Costello, who had a close relationship with Rudy Giuliani, one of the President's personal lawyers. Costello told Cohen he had a back channel of communication to Giuliani, and the channel was crucial and must be maintained.

The day after that, The New York Times published an article on Cohen and Trump's relationship. Page 146 of the report describes an e-mail between Cohen and Costello. Quote, Costello wrote he had spoken with Giuliani. Costello told Cohen the conversation was very, very positive. You are loved, they're in our corner, sleep well tonight, you have friends in high places.

The report also notes on 146 to -47 that Trump tweeted his support for Cohen earlier that day.

Professor McQuade, what's your reaction to these communications between Cohen, Costello, and Giuliani?

Ms. MCQUADE. They are certainly a red flag. They would cause some concern for further inquiry that President Trump and his team are trying to coddle Michael Cohen, trying to encourage him to cooperate, talking about you are loved, you're in our corner, you have friends in high—high places. And the emphasis on high places is important because, as the President, of course, he has the pardon power, which is the ultimate safeguard for Michael Cohen if he is to remain loyal to President Trump.

Ms. SCANLON. Thank you. I yield back.

Chairman NADLER. The gentlelady yields back.

The gentleman from Texas, Mr. Ratcliffe.

Mr. RATCLIFFE. Chairman, I wish I could say I appreciate you holding this hearing, but I can't, because I don't.

With due respect to some of the witnesses, some of whom have a background similar to mine at the Department of Justice, this has been just another in the latest of panicked, short-notice hearings where, despite Democrats telling us it's a vitally important hearing, in order to prepare for it, Republicans received the testimonies of the three Democratic witnesses an hour before the hearing started.

Hearings featuring buckets of chicken and convicted felons, unfortunately, have become the norm for this once esteemed committee. So to any of my fellow Americans who are still tuned in—although I don't know why they would be—let me remind you how and why we're here today, why we're really here today.

Hearings featuring buckets of chicken and convicted felons are being held by members of the Democratic Party that commissioned and paid for a dossier that falsely claimed that Donald Trump was part of a, quote, well developed conspiracy, end quote, with Russia. That same dossier was used by a Democratic administration to justify an investigation into their own false conspiracy allegation. And

now that the special counsel has conclusively and unequivocally found that there was no conspiracy between any American and the Russian Government, much less a conspiracy that was well developed between Donald Trump and the Russians, well, those same Democrats, who tried and failed to get rid of President Trump with a conspiracy that never existed, well, they are now undeterred. Now they want to justify their efforts to, ultimately, perhaps impeach Donald Trump by alleging that he obstructed their false conspiracy investigation.

Now, even if we set aside whether it's even legally possible to obstruct an investigation that is not lawfully predicated, which this one may ultimately prove to be, and even if we set aside whether or not any President can obstruct justice by doing what the Constitution allows or authorizes a President to do, like fire any executive branch employee, even if we set all of that aside for now and focus instead on the fact that this obstruction of justice narrative against Donald Trump was started by the very same people who started the false conspiracy allegation.

I'll remind my fellow Americans that it was Jim Comey who started the obstruction of justice theory in memos that he intentionally leaked, and some would submit unlawfully leaked, in order to start this special counsel investigation. And it was Andy McCabe and Peter Strzok and Lisa Page and Jim Baker who opened this obstruction of justice case after discussing the ridiculous theory, false theory, that Vladimir Putin may have ordered Donald Trump to fire Jim Comey.

So now today, to advance that obstruction of justice investigation into an investigation where there was no conspiracy, my Democratic colleagues have called three witnesses. Two of those witnesses were part of the Obama Justice Department when it started the false conspiracy allegation to opine against the very same target of the false conspiracy investigation. And the third witness that the Democrats called is Mr. Dean.

Now, Mr. Dean, I have no problem with you having an opinion. You've paid your debt to society, and you've made your opinion clear. In the last 2 years, did you know you've sent 970 tweets about Donald Trump? All 970 tweets about Donald Trump are anti-Donald Trump. So you are entitled to that opinion about him. You don't have to like him. But because of disbarment, you are legally prohibited from having an opinion about obstruction of justice.

Look, to my Democratic colleagues, unlike Bob Mueller, who needed to find a crime to indict and did not, you don't need one to impeach Donald Trump. You don't need one. It's the same reason why the chairman, within days of Donald Trump getting elected, talked about impeaching him. It's why some Democrats on this committee voted to impeach Donald Trump just a few months after he was into office. It's why some Democrats on this committee voted to impeach Donald Trump before a word of the Mueller report was ever written.

Look, you're in control of the House, and at the top of the House is the Speaker of the House who has reversed the presumption of innocence in this country to a presumption of guilt, and said last week that she plans to see Donald Trump in prison. So I don't

know what your plans are. You all can do whatever you want, but stop wasting our time and just do it.

I yield back.

Chairman NADLER. The gentleman yields back.

The gentleman from Colorado, Mr. Neguse.

Mr. NEGUSE. Mr. Chair, I believe the gentlewoman from Texas——

Chairman NADLER. Excuse me. I'm sorry. I skipped the gentlelady from Texas, Ms. Garcia. I'm sorry.

Ms. GARCIA. You did not. You just called me. Great save.

First of all, let me just thank, Mr. Chairman, you for pulling this hearing together.

To all the witnesses who have appeared, it's really important that we get some clarity on some of the issues around the Mueller report. And to do that, I want to go ahead and just follow up where our vice chair left off, Ms. Scanlon, and begin with you, Ms. Vance.

Page 141 of Volume II of the report goes on to quote about Cohen, and we're dealing with, again about Cohen. Cohen also recalls speaking with the President's personal counsel about pardons after the searches of his home and office had occurred, at a time when the media had reported that pardon discussions were occurring at the White House, end quote. And further, quote, According to Cohen, the President's personal counsel responded that Cohen should stay on message, that the investigation was a witch hunt, and that everything would be fine. Cohen understood, based on this conversation and previous conversations about pardons with the President's personal counsel, that as long as he stayed on message, he would be taken care of by the President, either through a pardon or through the investigation being shut down.

Hearing that and seeing that in the report, and understanding Michael Cohen's circumstances, his long-standing relationship with the Trump family, and the evidence presented in the report, was Mr. Cohen's understanding of the situation reasonable, and why?

Ms. VANCE. You know, ultimately, that decision would be up to a jury or to a decisionmaker such as this body, but when you look at this evidence, it looks like the very heart of obstruction. If you take it out of the context of this President and his advisers and think about other kinds of obstruction cases where you might see this kind of conduct, you think about, for instance, a drug-trafficking ring, where the kingpin tells people, as long as you stay on our side, don't worry, we'll take care of you. This isn't an unusual situation, and we can plainly understand this language and what's going on here with Mr. Cohen.

Ms. GARCIA. Mr. Dean, do you have a reaction to that, sir?

Mr. DEAN. Oh, I would join what Ms. Vance said.

Ms. GARCIA. Okay. And, Ms. McQuade, do you agree or do you see it any differently?

Ms. MCQUADE. Yes, I agree. You know, I don't know that, again, looking at this in isolation, gets us to a specific count of obstruction of justice, but looking at it in the grand scheme of things, it is part of a pattern of encouraging witnesses to cooperate and discouraging them—to protect Mr. Trump and discourage them from cooperating with the government.

Ms. GARCIA. It's sort of a signal.

Then on page 141, again of Volume II, the report goes on to say, quote, On August 21, 2018, Cohen pleaded guilty in the Southern District of New York to eight felony charges, including two counts of campaign finance violations, based on the payments he made during the final weeks of the campaign to women who said they had affairs with the President. During the plea hearing, Cohen stated that he had worked at the direction of the candidate in making those payments.

The report notes that the same day, the President compared Cohen and Manafort, quote—and this is a direct quote—I feel very badly for Paul Manafort and his wonderful family. Justice took a 12-year-old tax case, among other things, applied tremendous pressure on him, and unlike Michael Cohen, he refused to break up stories in order to get a deal. Such respect for a brave man.

Then on page 150, then documents that—documents Cohen pled guilty on November 29th to making false statements to Congress about the Trump Tower-Moscow project. The same day, the report notes, quote, The President also said that Cohen was a weak person, and by being weak, unlike other people that you watch, he is a weak person, and what he's trying to do is get a reduced sentence. So he's lying about a project that everybody knew about.

And pages 48 through 152 document numerous other statements that the President's made about Cohen, either in public or through tweet.

So my question to the three of you, again, Mr. Dean, Ms. Vance, and Ms. McQuade, what is your reaction to the evidence presented in the report relating to Michael Cohen and the possibility of a pardon? And, Ms. White, you would like to start first?

Ms. VANCE. Sure. I'm going to agree with Professor McQuade. I'm not confident that standing on its own this conduct would support an independent charge of obstruction. We would need to look at it more closely and weigh it more carefully. But what it does do is it displays this pattern of conduct by the President. When you're on his side, he likes you. But the minute he thinks that you stray off of his team, he's quick to condemn you. And again, this isn't your boss or a neighborhood friend or someone like that. This is the President of the United States doing it formally and publicly in a way that conveys that he will protect you, perhaps even pardon you, when you're on his team, but if you stray, you should expect consequences. It's not, perhaps, a count of obstruction, but it is obstructive conduct.

Ms. GARCIA. It's part of the pattern?

Ms. VANCE. Absolutely.

Ms. GARCIA. Okay. Mr. Dean, anything you need to add?

Mr. DEAN. Well, the pardon power is really one of the greatest powers a President is given in the Constitution. It's really unchecked and uncheckable. But if his motives are to guide a witness or influence a witness, the special counsel has a section in here on how a President misusing his powers is an indictable potential and not within the law.

I don't think Michael Cohen is going to get a pardon, given the current situation, given he did cooperate to a degree, not to the degree the Southern District wanted, but he did cooperate with the Southern District on the payment of hush money to two of Mr.

Trump's mistresses just before the election. They, however, want cooperation from the day you were born until the moment you cooperate, which is a very high standard, higher than some U.S. attorney's offices.

So he didn't get the full support of the Southern District while he was an important witness, and a judge might give him some consideration at some point on that.

Ms. GARCIA. Thank you.

And, Mr. Chairman, can McQuade—did you have anything to add to that?

Ms. MCQUADE. The only thing I would add is the fact that these statements were made out in the open. They were in public statements and in tweets. And what Robert Mueller says is, although that is uncommon, that does not in any way diminish their harm and could very well be the basis for an obstruction charge.

Ms. GARCIA. Thank you. I yield back.

Chairman NADLER. The time of the gentlelady is expired.

The gentleman from Colorado, Mr. Neguse.

Mr. NEGUSE. Thank you, Mr. Chairman. And thank you to the witnesses for your testimony today.

I'd like to talk about two topics: the obstruction of evidence and the interviews with the special counsel and the refusal to interview the special counsel. On page 10 of Volume 1, the report states, and I'll quote, Some of the individuals we—meaning the special counsel—interviewed, or whose conduct we investigated, including some associated with the Trump campaign, deleted relevant communications or communicated during the relevant period using applications that feature encryption or that do not provide for long-term retention of data or communication records, end quote.

The report discusses on page 130 of Volume I, potentially destroyed evidence related to Manafort's communications with the Trump campaign members, the administration, and, quote, the peace plan in his meetings with Kilimnik. Page 10, Volume I, goes on to say, quote, The special counsel's office cannot rule out the possibility of the unavailable information would shed additional light on or cast in a new light the events described in the report, end quote, which I believe both Professor McQuade and Professor Vance alluded to in their opening statements.

Professor Vance, what's your reaction to that statement in the special counsel's report, and, you know, how common is destruction of evidence in these types of investigations?

Ms. VANCE. So it's a really good question, because I'll tell you what isn't common. What isn't common, to see multiple sorts of incidents where evidence is destroyed or someone tries to get a witness to refrain from cooperating with an investigation. Typically, you see efforts to obstruct justice in isolation, or maybe you see one defendant doing a couple of things. This sort of systematic obstruction that's so extreme that the special counsel, when he writes his final report, feels the need to discuss it so early in the report, I think, is unusual.

And the full scope of what Mueller discusses here is witnesses who were unavailable because of privilege, witnesses who lied, as you point out evidence that's destroyed by the use of technology

and other apps, and information that's offshore. This is a persistent pattern, not an isolated occurrence.

Mr. NEGUSE. Professor McQuade, would you agree with that assessment?

Ms. MCQUADE. I would. And we've heard today many representations about how President Trump permitted unprecedented access to his records, and yet Robert Mueller found no conspiracy. Robert Mueller puts very early in his report all of the obstacles that he faced and even says that this gap means that more evidence could help shed some light on this matter. I think that supports hearings like this one to try to get to the bottom of what actually happened.

Mr. NEGUSE. Well, so I want to speak to that, the misinformation, I think, in the public sphere around this, quote/unquote, unprecedented access that was given to the special counsel. As identified in the report on page C1 of Volume II, quote, the President provided written responses through his personal counsel to questions submitted to him by the special counsel's office. However, page 13 of the volume states, quote, During the course of our discussions, the President did agree to answer written questions on certain Russia-related topics, and he provided us with answers. He did not similarly agree to provide written answers to questions on obstruction topics or questions on events during the transition.

The special counsel's office also documented its effort to secure an interview with the President beginning in December of 2017. Still, on page C1, the report documents the office's discussions with the President's lawyers about a voluntary interview. I'll quote the report. We also advised counsel that an interview with the President is vital to our investigation, end quote. The President's attorneys, quote, did not provide us with reason to forego seeking an interview. We additionally stated that it is in the interest of the Presidency and the public for an interview to take place, and offered numerous accommodations to aid the President's preparation and avoid surprise.

So the question, Professor Vance, what is your reaction to that passage of the special counsel's report, and, of course, given your experience as a prosecutor, the value in being able to interview witnesses?

Ms. VANCE. Obviously, the experience that you have in the back-and-forth of questioning is much more productive for prosecutors. And the question that one's left with after reading this is, why wouldn't the President sit down and sit for an interview like other Presidents had? If the explanation that we hear today that there was so much cooperation from this administration, that witnesses were provided and documents were provided, and that this was a very cooperative effort by the White House to engage with the Mueller investigation, if all of that is true, then you have to ask yourself, why wouldn't they make the most important witness, the President of the United States, available?

Mr. NEGUSE. Thank you, Professor.

With that, I yield back my time, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

The gentlelady from Georgia, Mrs. McBath.

Mrs. MCBATH. Thank you so much.

For those of you that are here today to testify, we greatly appreciate your taking the time, spending the time with us to get to the truth.

I have some questions related to the disobeying of orders, and I refer you to the slides that we'll be discussing.

President Trump has tweeted that nobody disobeys my orders, and, however, the report documents multiple instances where subordinates did the opposite. For example, on page 4, Volume II, and I quote, On June 17th, 2017, the President called McGahn at home and directed him to call the Acting Attorney General and say that the special counsel had conflicts of interest and must be removed. McGahn did not carry out this direction, however, deciding that he would resign, rather than trigger what he regarded as a potential Saturday Night Massacre.

Now, on page 5 of Volume II, and I quote, Lewandowski did not want to deliver the President's message personally, so he asked senior White House official Rick Dearborn to deliver it to Sessions. And Dearborn was uncomfortable with the task and did not follow through.

Then on page 5, Volume II, and I quote, Lewandowski did not want to deliver the President's message personally, so he asked senior White House official Rick Dearborn to deliver it to Sessions. Dearborn was uncomfortable with the task and did not follow through.

And the last example that I'll give you is on page 75, Volume II, which says, substantial evidence indicates that the catalyst for the President's decision to fire Comey was Comey's unwillingness to publicly state that the President was not personally under investigation, despite the President's repeated requests that Comey make such an announcement.

Mr. Dean, my question is for you. In your experience, is it common to disregard or to ignore direction or requests from the President? And in what circumstances would that be appropriate for staff to do?

Mr. DEAN. It's unusual, but it did happen, for example, in the Nixon White House. Not every instruction generally given to either H.R. Haldeman, the chief of staff, or John Ehrlichman, the President's chief domestic advisor, when they thought the President was flying off the handle, sometimes they didn't act. But sometimes they did. Or the President went to somebody who would.

For example, at one point, Richard Nixon wanted to order a firebombing of the Brookings Institute so he could send burglars in to the safe when the fire department responded. Haldeman and Kissinger, who were present for that meeting, did not respond, did not pass the order. He called Chuck Colson in, another aide, and Chuck Colson did respond. When I got wind of it, I—I didn't know it was the President's order, and heard this insane plan, flew to California and disrupted it, and said it was insane. Ehrlichman picked up the phone, called Colson, and said young Counsel Dean is out here, doesn't think the Brookings plan is a very good one, and said cancel it. And turned to me, said, anything else? I said, no, sir, I'll go back to Washington, which I did.

So there's an instance where a President's plan to firebomb the Brookings Institute was canceled. But I can assure you it's one of

the early roots of Watergate because of the attitude it showed of what the President wanted.

Mrs. MCBATH. Well, thank you. That sounds pretty disturbing, but I appreciate the truth.

My questions are for all three of you, Mr. Dean, Professor Vance, and Professor McQuade. What are your reactions to these kinds of decisions by the White House personnel to ignore the President? And, Professor McQuade, if you'd just answer first, please.

Ms. MCQUADE. Well, on the one hand, I think any time someone is disregarding an order from the President, we have a very dysfunctional White House that should alarm every American. On the other hand, I am grateful that they disregarded these orders, because if President Trump had gotten his way, then the investigation into Russian attack on our election would have ended. It would have focused only on future elections, and we would not have the information that we have that's necessary to keep our country safe.

Mrs. MCBATH. Thank you.

Ms. VANCE. It's important to remember that this is a really good example. This is an explanation of why the statute that makes obstruction a crime also makes the attempt or the endeavor to commit obstruction a crime, because even without the willing participation from his staff that would have permitted the President to complete his obstruction, this evidence still shows that the President's mind-set was such that he wanted to take these acts, that he was not committed to truth in the criminal justice system, that he wanted to divert it away from the truth for his own benefit.

Mrs. MCBATH. Thank you.

Mr. Dean.

Mr. DEAN. I agree, that I think it's healthy at times the staff does not always follow through robotically and does interpret orders. But as I say, it is not the norm. It's typically when the staff senses something is terribly amiss and then they don't follow up.

Mrs. MCBATH. Thank you. And I'm out of time. I yield the balance of my time.

Chairman NADLER. The gentlelady yields back.

The gentleman from Pennsylvania, Mr. Reschenthaler.

Mr. RESCHENTHALER. Thank you, Mr. Chairman. I yield to my colleague from Ohio.

Mr. JORDAN. I thank the gentleman for yielding.

Mr. Malcolm, I'm going to go back kind of where Mr. Armstrong and Mr. Steube were earlier this afternoon. Does the President have the right to fire people?

Mr. MALCOLM. Yes.

Mr. JORDAN. Does the President have the right to pardon people?

Mr. MALCOLM. Yes.

Mr. JORDAN. Could a lawful action like a pardon or firing an individual be done with corrupt intent and therefore be criminal?

Mr. MALCOLM. It could be done for an improper purpose, again—but the President has plenary—plenary power to exercise a pardon.

Mr. JORDAN. Could a lawful action with corrupt intent, could that be obstruction of justice?

Mr. MALCOLM. Under certain circumstances with certain people, yes.

Mr. JORDAN. Okay. And could a lawful action with corrupt intent be criminal even if there is, in this situation, no underlying crime?
Mr. MALCOLM. Sure.
Mr. JORDAN. Okay. But it seems to me, what if there's no action?
Mr. MALCOLM. Well——
Mr. JORDAN. I mean, I keep coming back to this, did the President fire Bob Mueller?
Mr. MALCOLM. No.
Mr. JORDAN. Did the President fire Rod Rosenstein?
Mr. MALCOLM. No.
Mr. JORDAN. Did the President pardon Paul Manafort?
Mr. MALCOLM. No.
Mr. JORDAN. Did he pardon Michael Flynn?
Mr. MALCOLM. No.
Mr. JORDAN. Did he pardon Michael Cohen?
Mr. MALCOLM. No.
Mr. JORDAN. Did he pardon Roger Stone?
Mr. MALCOLM. No.
Mr. JORDAN. Did the President stop people from testifying?
Mr. MALCOLM. Not so far as I know.
Mr. JORDAN. Did the President's chief of staff testify, Reince Priebus?
Mr. MALCOLM. Two of them.
Mr. JORDAN. Yeah, two of them. Did the President's White House counsel, Don McGahn, testify?
Mr. MALCOLM. Yes.
Mr. JORDAN. For 30 hours.
Mr. MALCOLM. So I'm told.
Mr. JORDAN. Did the President do anything to stop Bob Mueller getting access to the information he sought access to?
Mr. MALCOLM. Not that I'm aware of.
Mr. JORDAN. Did Jeff Sessions unrecuse himself?
Mr. MALCOLM. No.
Mr. JORDAN. I don't know if that's a word, but it's been used a lot here today. No.
Mr. MALCOLM. And I don't think there's anything improper in asking him to consider it.
Mr. JORDAN. Yeah. Here's my point. When you—in my judgment, when you sum this all up, the President was falsely accused. Do you keep looking at something Bob Mueller chose not to indict or do you investigate how the false accusations started? That's the fundamental choice for the House Judiciary Committee.
Mr. MALCOLM. That's for this body to decide.
Mr. JORDAN. Oh, I understand. I'm not asking you a question. I'm making a point now. Actually—I'm actually directing my comments now to the chairman of the committee.
I mean, Bob Mueller——
Chairman NADLER. Will the gentleman yield for an answer?
Mr. JORDAN. When I got my 2 minutes and 43 seconds, maybe I'll let you answer. You get—you get all the time you want because you run the committee.
But when the President's falsely accused, Bob Mueller says he's not going to indict, the Attorney General of the United States says they're not going to prosecute, not going to indict, do you keep look-

ing at that, or maybe do you want to look at how the whole darn thing started, how the whole false accusation began in the first place?

Seems to me, particularly when we're talking about something as critical as the FISA court, and the potential to violate people's fundamental liberties as could happen at the FISA court, and the evidence we already have seen, seems to me that's what you want to look at, but this committee says, no, we're not going to do that. We're going to keep going and looking at something Bob Mueller and the Attorney General of the United States have already looked at. So I don't get it. I think the House Judiciary Committee should be focused on that fundamental question, but unfortunately, that's not where it's heading.

With that, I would yield to the ranking member of the committee.

Mr. COLLINS. I appreciate the gentleman yielding.

Mr. Dean, we may have actually found something we might agree on in your last statements. And it goes back to this whole idea that they didn't—that some of the folks, after Mr. Trump said—you know, the President said stuff that they didn't follow through on. How many times—and I think following up on Mr. Jordan's comment—when you're in a position that you feel frustrated, there's a time—you had talked about the—President Nixon, you went and related this back to Watergate. It may be the only analogy we take here. Your staff around you is some—is supposed to give that advice to not follow—they're there to help you. Your last statement, you gave indication of that. Would that be correct?

Mr. DEAN. Yes.

Mr. COLLINS. Okay. Mr. Malcolm, in taking that a step further, we're playing this as a bad thing that they didn't follow through, you know, in going through this issue, but also, there are times—wouldn't you also agree that there are times that that's what the staff is around you for, that you come up with something—I mean, I come up with some—you probably have, the chairman I'm sure has, I have as well, came up with some bad ideas, and aren't you glad somebody's around you to say, eh, or I'm just gonna say, maybe he'll forget about it after lunch?

Mr. MALCOLM. Yes, that's correct. Particularly if you're familiar with the individual and are used to his venting his frustrations.

Mr. COLLINS. Exactly. I've got people who are very close—you know, those are the ones you trust. And I think it's interesting here, it's also interesting, as we continue this process, to know that you're attributing mad motives simply because they should have done or not done, and it goes on in places of business all the time and in law offices all the time and at U.S. attorney's offices all the time when this is looked at.

So I think it's really interesting, Mr. Dean, coming back to that point you made, we may not agree on the end result, but I think the point made was something interesting. I'll let you finish—I mean, just a minute.

But going back to Ms. McQuade for just a second. This is interesting that this is why this committee ought to be doing this, is simply sitting here listen to people pontificate on the original of the Mueller report, which could be read and have different opinion,

which we stated up front, that's not taking this a step further. This is simply regurgitating what has been your point of view for many years.

Mr. Dean, I will yield to you to finish.

Mr. DEAN. I was just going to make the point, and you're following up on Mr. Jordan, who has stepped out, if that were followed, Watergate would have never been investigated.

Mr. COLLINS. That's it. I yield back. I yield to the gentleman——

Chairman NADLER. The gentleman yields back.

The gentlelady from Florida, Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Mr. Chairman.

My colleagues have walked now through different actions by the President of the United States, and I'd like to talk through that pattern briefly. And if you'd like, I'll be referring you to the displayed slide.

On the first row in that chart, pictures people who, according to the report, President Trump directed to deny facts. Can you give us your reactions to the President asking the three people in the first row to deny facts? I'll start with Professor McQuade.

Ms. MCQUADE. Looking at the pictures, I see what appears to be Donald Trump, Jr.—is that Hope Hicks, maybe?——

Ms. MUCARSEL-POWELL. Yes. Hope Hicks and Don McGahn.

Ms. MCQUADE [continuing]. And Don McGahn. So I guess just to answer the question generally, denying facts suggests someone is being unhelpful in an investigation. We have heard some advocates here say President Trump was, you know, an open book in sharing information, but that is not consistent with asking people to deny facts that are true. To deny what happened with regard to Donald Trump, Jr., and Hope Hicks, of course, it was rewriting the press statement about what happened at the Trump Tower meeting. That is a case that is perilously close to criminal behavior, meeting with a foreign adversary for assistance in a campaign. Robert Mueller concluded that that was not a crime because he was not able to establish wilfulness, that is, knowledge that it was a crime, and that the material received was a thing of value, not that it didn't happen and it wasn't terribly unpatriotic. And so I think denying facts is certainly consistent with obstruction of justice.

Ms. MUCARSEL-POWELL. Thank you.

Now let's turn to the second row. According to notes written by former Attorney General Jeff Sessions' chief of staff, Joseph Hunt, when Sessions told the President that a special counsel had been appointed, the President, and I quote, slumped back in his chair and said, oh, my God, this is terrible, this is the end of my Presidency, I am—the f-word. And I'm a mom, my kids are probably watching, which is why I don't want to say it.

The report then documents attempts by the President to curtail the special counsel's investigation, which the report found, quote, linked to the special counsel's oversight of investigations that involved the President's conduct. That's Volume II, page 89.

The second row in that chart pictures people who, according to the report, President Trump asked in some way to curtail the special counsel's investigation. Can you give us your reactions to the portions of the Mueller report which describe the President asking the people in row two to curtail the special counsel's investigation?

Ms. VANCE. So I'm old enough that I'm going to flunk the eye chart exam here, but I'll talk about the incident with Attorney General Sessions, because this is well documented, and we know that what the President wanted to have the Attorney General do was to strictly limit the Mueller investigation so that it could only look forwards, so that it could not look backwards. And this means that the President of the United States wanted to make sure that there was no investigation into his own conduct, no investigation into the conduct of his associates, and no investigation into the conduct of Russia, which attacked our elections.

This, I think, is dangerous territory for a President to be in. It certainly speaks, in several of these events, particularly this one with former Attorney General Sessions and with Don McGahn, of obstructive conduct. It's certainly something that could be of interest to this body.

Ms. MUCARSEL-POWELL. Thank you, Ms. Vance.

Now let's turn to row three. The report states, quote, that many of the President's acts directed at witnesses included discouragement of cooperation with the government and suggestions of possible future pardons. And that the President engaged in conduct involving public attacks on the investigation, nonpublic efforts to control it, and efforts in both public and private to encourage witnesses not to cooperate with the investigation. That's in Volume II, page 7.

Row three shows people who, according to the report, President Trump encouraged not to cooperate with the special counsel's investigation. Can you give us your reactions to the portions of the Mueller report where the President contacted those witnesses? Either Ms. McQuade or——

Mr. DEAN. Is that question to me?

Ms. MUCARSEL-POWELL. Either.

Mr. DEAN. I'm old enough that I've had cataract surgery, and I can see the chart.

Ms. MUCARSEL-POWELL. You can, that's great.

Mr. DEAN. And I did address that in my opening statement, the fact that pardons were dangled throughout, and may still be the case that they're being dangled. There's no question that's an obstruction as far as the Congress is concerned. It was paragraph 9 of Article I of the Nixon impeachment proceeding. So this body has set the precedent, as far as their view of Presidential conduct, that it is improper.

Ms. MUCARSEL-POWELL. Thank you, Mr. Dean.

I yield back my time.

Chairman NADLER. The gentlelady yields back.

The gentlelady from Texas, Ms. Escobar.

Ms. ESCOBAR. Thank you, Mr. Chairman. And thanks to all of you for being here.

As we near the end of this hearing, I want to quickly walk through a few of the significant findings by the special counsel just to summarize for the record. And while I have them on a slide, I will be reading the words on the slide for you.

On page 89, Volume II, it states, quote, Substantial evidence indicates that by June 17th, 2017, the President knew his conduct

was under investigation by a Federal prosecutor who could present any evidence of Federal crimes to a grand jury.

Professor Vance, quickly, do you agree, based on your understanding of the events and the evidence presented in the report? And if so, why?

Ms. VANCE. Well, I do, and this is the nexus question, right? We're talking about whether the President is aware that his acts would interfere with ongoing investigations. And it's clear that as these acts take place, he had that awareness, and that that element of the offense of obstruction could be established for several of these instances.

Ms. ESCOBAR. Thank you. Page 89, Volume II, quote, Substantial evidence indicates that the President's attempts to remove the special counsel were linked to the special counsel's oversight of investigations that involved the President's conduct and most immediately to reports that the President was being investigated for potential obstruction of justice.

Mr. Dean, do you agree, based on your understanding of the events and the evidence presented in the report? And if so, quickly, why?

Mr. DEAN. Well, I think it's pretty obvious that it's spelled out nicely by the special counsel in this report that, indeed, he's making the case that that is obstruction of justice.

Ms. ESCOBAR. Thank you. Page 120, Volume II, quote, Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the special counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent further scrutiny of the President's conduct toward the investigation.

Professor McQuade, do you agree, based on your understanding of the events and the evidence presented in the report? And if so, quickly, why?

Ms. MCQUADE. Yes, I believe this is the strongest example of obstruction of justice. This even goes beyond exercise of the President's Article II powers by directing McGahn to create a false document. I believe Mr. Malcolm and Mr. Barr even would agree that this is obstruction of justice.

Ms. ESCOBAR. Thank you. Page 97, Volume II, quote, Substantial evidence indicates that the President's effort to have Sessions limit the scope of the special counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President's and his campaign's conduct.

Professor Vance, do you agree, based on your understanding of the events and of the evidence presented in the report? And if so, why?

Ms. VANCE. So this again, would ultimately be a fact question for a jury, but based on the evidence that we have in front of us and the report, I think a prosecutor could appropriately indict and expect to convict on the basis of this evidence.

Ms. ESCOBAR. Thank you. Professor McQuade, you've reminded us throughout this hearing that we need to look at all of this evidence in its totality. What does all of this evidence in its totality tell you?

Ms. MCQUADE. Number one, that Russia attacked our country. Number two, that President Trump sought to curtail the investigation of that attack because he was concerned that some of his own behavior might amount to criminal behavior, it might delegitimize his electoral victory, or it might expose criminal behavior of paying hush money. As a result, he committed at least four acts of obstruction of justice. Robert Mueller could not charge him. Out of an abundance of fairness, he didn't even want to say he could charge him because he left it to Congress for impeachment.

Ms. ESCOBAR. Thank you. As I'm sure you are all aware, the President recently declared that he is, quote, fighting all subpoenas issued by Congress, and has directed all of his senior officials, including his former counsel, Don McGahn, not to testify. Recent polls show that nearly three-quarters of registered voters believe these officials should obey congressional subpoenas and testify.

Mr. Dean, as a former White House counsel, how should congressional subpoenas be handled by the executive branch?

Mr. DEAN. There's no question, they must be honored in some way. There is a March—excuse me—May 20th of this year, the Office of Legal Counsel issued a memo that White House staff and close advisers of the President, both sitting and former, are immune from subpoenas of this body. This is an extreme view to me.

And I must add something to put the bigger picture together. Have you watched Office of Legal Counsel? When I was in the White House, it was considered to be the President's law firm. That's always been the case. And the President's law firm tends to give favorable decisions to their client, and this is true from everything about not indicting a sitting President, to making current staff totally immune from Congress. I think these all need to be tested in court because I don't think most of them will stand.

Ms. ESCOBAR. Thank you. I yield back.

Chairman NADLER. The time of the gentlelady has expired.

The gentlelady from Florida, Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

And thank you to all of our witnesses for being with us today, for your endurance and your testimony.

I would like to talk a bit about the special counsel and the OLC opinion.

Professor McQuade, there has been some confusion related to Special Counsel Mueller's final determinations in the report. As a matter of background, I want to address the Department of Justice guidelines that were governing his work.

In Volume II, pages 1 through 2, the report states, and I quote: While the OLC opinion concludes that a sitting President may not be prosecuted, it recognizes that a criminal investigation during the President's term is permissible. The OLC opinion also recognizes that a President does not have immunity after he leaves office. And if individuals other than the President committed an obstruction offense, they may be prosecuted at that time.

As a former Federal prosecutor, do you believe the special counsel was confined by the OLC opinion?

Ms. MCQUADE. Yes. I believe that he found that he could not reach a traditional prosecutorial decision with regard to charging

a sitting President, and so he sought to preserve the evidence, as he said, while memories were fresh and documents available.

Mrs. DEMINGS. Thank you.

Professor Vance, on page 2 of Volume II, the report continues, and I quote: Given those considerations, the facts known to us, and the strong public interest in safeguarding the integrity of the criminal justice system, we conducted a thorough, factual investigation in order to preserve the evidence when memories are fresh and documentarial materials were available.

Given the restrictions placed on the Department, why was it appropriate for the special counsel to conduct a thorough, factual investigation in order to preserve the evidence?

Ms. VANCE. The best time to conduct a criminal investigation, as the Mueller report notes, is as close in time as possible to the events taking place. That's when people's memories are fresh; that's when documents are available.

And so Mueller, in the report, acknowledges that, although the OLC memo kept him from indicting a sitting President, that there were a number of other legitimate purposes for investigation: The President would not be immune from charges forever. There could be other people involved.

And as the OLC memo explicitly notes, even though a President can't be indicted, he can be impeached in Congress. OLC almost seems to contemplate impeachment as the appropriate step to take for the one person in our society who is immune from prosecution——

Mrs. DEMINGS. So you're saying even in the OLC opinion that is the inference or the——

Ms. VANCE. They explicitly say that, that the President can be impeached.

Mrs. DEMINGS. Thank you.

And, Mr. Dean, on page 76 of Volume II, the report states, and I quote: The evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns.

What is your reaction to that statement by the Special Counsel's Office? Do you agree? And if so, why?

Mr. DEAN. I'm sorry. My phone was ringing in my ear during part of your statement.

Mrs. DEMINGS. I'll——

Mr. DEAN. Could you recapture it for me?

Mrs. DEMINGS. On page 76 of Volume II, the report states, and I quote: The evidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that the President could have understood to be crimes or that would give rise to personal and political concerns.

What is your reaction to that statement by the Special Counsel's Office? Do you agree? And if so, why?

Mr. DEAN. I think the special counsel has shown throughout this report that he's been very cautious and prudent in what he has said and what he has not said.

This is in the tradition not of the Ken Starr independent counsel investigation but, rather, in the roadmap that was referred to this

committee that was skeletal and just a minimum of facts and clear facts based on the investigations, grand jury hearings, FBI interviews. So I think this is a very appropriate statement and very insightful.

Mrs. DEMINGS. Thank you so much.

And, Professor McQuade, back to you. The report then goes on to state—and, again, I am quoting directly from the report—on page 2 of Volume II: At the same time, if we had confidence, after a thorough investigation of the facts, that the President clearly did not commit obstruction of justice, we would so state. Based on the facts and the applicable legal standards, we were unable to reach that judgment. Accordingly, while the report does not conclude that the President committed a crime, it also does not exonerate him.

What is your reaction to that statement——

Ms. MCQUADE. Yes——

Mrs. DEMINGS [continuing]. In the special counsel's report?

Ms. MCQUADE. I believe that, because Robert Mueller could not make a charging decision, he did not want to prejudge the evidence because he was leaving it for Congress. He did not want to preempt Congress' power of impeachment and wanted to leave that consideration open.

It has been pointed out today that some have said prosecutors don't exonerate; they charge or don't charge. That is only true in a traditional case. We talk about the binary decision. But that can't be the case when you're dealing with the President, who cannot be charged. Otherwise, that is a "heads, I win; tails, you lose."

And so, in that scenario, Robert Mueller simply put the evidence out there, and he left it for Congress to decide whether impeachment was appropriate.

Mrs. DEMINGS. And I think someone mentioned earlier that he almost went above and beyond to make sure of that, his decision in that.

Ms. MCQUADE. Yes. I think, out of an abundance of fairness, he didn't even want to say that a crime had been committed, because he did not want to prejudge the evidence for another decision-maker—that is, Congress.

Mrs. DEMINGS. Thank you all so much.

Mr. Chairman, I yield back.

Chairman NADLER. The gentlelady yields back.

The gentleman from California, Mr. Correa.

Mr. CORREA. Thank you very much, Mr. Chairman.

First, I want to thank all of the witnesses for being here today. This is very important. I think we're making history again in this United States of America.

And, Mr. Dean, I also want to thank you very much, because, as was said earlier, you paid your debt to society, yet you still came up. And you've taken some shots, so to speak, personal shots here, but yet you still wanted to be here and testify. Why did you decide to show up and testify?

Mr. DEAN. Congressman, when I worked for Mr. Nixon, I was really never worried about what the outcome would be and how it would be resolved. I've got to tell you that, from the day Mr. Trump was nominated—and I was following in a separate set of polls, the Los Angeles Times as well as the Monmouth polls, and it looked

pretty clear to these pollsters that Mr. Trump had a very good chance of winning. And I began developing a knot in my stomach that sits there to this day.

So I'm trying to deal with that in the best way I can, to try to tell people: These are troubled times, and we should go through these processes and sort them out. So anything I can do to add to the process, I'm more than willing.

Mr. CORREA. Thank you very much.

I want to turn to the firing of FBI Director James Comey.

Early 2017, the White House was warned that National Security Advisor Michael Flynn was being investigated after lying to Federal authorities about communications with the Russian Ambassador about sanctions on Russia for its election interference during the campaign. Mr. Flynn's false statements constituted a Federal crime.

On page 31 of Volume II of the report, it describes the initial warnings from the Justice Department, and I quote, open quote: The public statements made by the Vice President denying that Flynn and Kislyak discussed sanctions were not true and put Flynn in a potentially compromising position because the Russians would know he had lied. Yates disclosed that Flynn had been interviewed by the FBI.

And, as we know, Flynn later pleaded guilt to making false statements to the FBI and has been cooperating with Federal law enforcement investigators.

My question for Ms. Vance and Ms. McQuade: As former Federal prosecutors, can you explain the value of charging someone with lying to Federal prosecutors?

Ms. VANCE. That's how we protect the integrity of the system. If people feel free to lie when they're being questioned by people who are in law enforcement, the entire system breaks down. It's, in some ways, a self-accountability system and a question of whether we want to have a lawless society or a society that's governed by the rule of law. Every Federal prosecutor I know takes that crime very seriously.

Mr. CORREA. Ms. McQuade.

Ms. MCQUADE. I would agree, false statements is a brand of obstruction of justice. Some people have criticized it as a process crime. Process crimes are among the most important there are. They're very serious, because it prevents investigators from finding the truth.

Mr. CORREA. Charging him with lying, does that mean that the FBI didn't have anything else to charge him with other than lying?

Ms. VANCE. No, it doesn't actually. Charging 18 U.S. Code 1001, which is lying to the Bureau—and, of course, there are variants of that—lying to Congress, obstructing justice—these are charges that mean that we take the system seriously. Sometimes they're brought alone; sometimes they're brought in tandem with other charges.

But one issue I'd point out, Congressman, that seems to be lost in the conversation is that, if we don't charge obstruction without an underlying crime, that means that the people who are the best obstructers, the most successful people at hiding their crimes, those

people would get off scot-free. That's not how we want this system to work.

Mr. CORREA. Mr. Dean, you mentioned that the firing of former FBI Director James Comey, you saw some parallels—my words. What happened during the Nixon administration brought back some memories. Can you elaborate a little bit on what your thoughts there were?

Mr. DEAN. Yeah. The firing, to me—well, many things in the report are reminiscent of Watergate in their parallels.

The firing of Comey was not unlike the June 23rd effort by the President, President Nixon, to halt the FBI investigation, which is what he did. He tried to use the CIA to stop the investigation by having his chief of staff meet with the Director of the CIA and invoke this. And this was based on information that had come from his former attorney general, who was his campaign manager.

And, initially, there might have been a legitimate reason to do this, because they were still trying to figure out what the CIA's role was. But as you listen to the tapes and it goes through each step, Mr. Nixon escalates it from what the real reason was to this being a solution of a way to stop the investigation.

So it was the decision—or hearing that tape is what resulted in this committee, where there were 11 Republicans who disagreed with Article I, turning around and, while the vote had already been taken, joining the majority in saying, if this comes to a vote on the floor, because of this tape, we think it is so troublesome that we will join the majority and vote for Article I, which was the obstruction article.

Mr. CORREA. So your opinion would be, continue these investigations.

Mr. DEAN. Absolutely.

Chairman NADLER. The time of the gentleman has expired.

The gentlelady from Texas for a unanimous consent request.

Ms. JACKSON LEE. I thank you, Mr. Chairman.

I'd like to put into the record the framework for this hearing, and that is a "Report on the Investigation into Russian Interference in the 2016 Presidential Election," which includes Volume I and II——

Chairman NADLER. Without objection——

Ms. JACKSON LEE [continuing]. And to thank Mr. Dean, Ms. Vance——

Chairman NADLER. Without objection——

Ms. JACKSON LEE [continuing]. Mr. Malcolm, and McQuade for their commitment to this hearing, Mr. Chairman, and to remind us that Barbara Jordan said we must uphold the Constitution.

I yield back.

Chairman NADLER. Without objection, the report will be entered into the record.

[The information follows:]

MS. JACKSON LEE FOR THE OFFICIAL RECORD

A report for the record from the Honorable Sheila Jackson Lee, a Representative in the Congress from the State of Texas:

https://www.justice.gov/storage/report.pdf

Chairman NADLER. The gentleman from Arizona, Mr. Stanton, is recognized.

Mr. STANTON. Thank you very much, Mr. Chairman.

I want to thank the witnesses for being here today and to offer their testimony on what has become one of the most important responsibilities of our time; that's defending our Constitution and the rule of law.

And you being here today has been critically important to help explain to the American people what's is in the Mueller report and to provide important context and analysis, and I thank you.

I had a question for Professor Vance and McQuade. I wanted the opportunity to kind of respond to a general argument that Mr. Malcolm has made throughout this hearing.

I believe that Mr. Malcolm has suggested that the President should only be investigated for facially illegally exercises of his Article II powers, such as granting a pardon in exchange for bribes, that the conduct investigated by the special counsel should be beyond the scope of a criminal inquiry, because, otherwise, the threat of criminal prosecution would act as a chilling effect on the Presidency.

I want each of you to have the opportunity to respond to that argument and give us your thoughts on it.

Please, Professor McQuade first.

Ms. MCQUADE. I disagree with that argument, and so did Robert Mueller and his team, who rejected that argument.

Now, there are some instances of obstruction of justice in the report that are facially destructive—asking a witness to create a false document—that are even beyond Article II powers.

But even within Article II powers, the phrase that Robert Mueller hung his hat on was the word "faithfully" in the Constitution, that the President has a duty not just to execute powers but to execute them faithfully. And to permit him to execute his executive powers without any check on it would render him above the law.

Mr. STANTON. Professor Joyce, your thoughts on Professor Malcolm's general argument throughout the hearing today?

Ms. VANCE. So I think it's a strained interpretation of the law. And I categorically reject the suggestion that, under the Constitution and under our laws, there is one person in this country who's above the law, the President of the United States. I don't think that's what our system does.

And here's a good example, if people struggle with that issue. It's not a President, but it's the executive of the State of Illinois, the Governor, Rod Blagojevich, who did an act that he was entitled to do. He appointed a Senator to replace a Senator who had vacated his seat.

And that's a perfectly legal act. The problem was he took a bribe in exchange for agreeing who he would select. Lawful act, corrupt motive. That's corruption of justice, and it should be for a President too.

Mr. STANTON. Mr. Dean, you had a very brief answer?

Mr. DEAN. Yes. I want to footnote that I have studied virtually all the Presidencies since Nixon, including Nixon's, and Presidents operate usually very well with investigations going on. They com-

partmentalize, they function, they have no problem with it. If they're innocent, it goes—it passes away. If they're not, then they have some problems. But they still operate well when investigations are going on.

Mr. STANTON. Professor Vance, I'm sure you're familiar with the Federal statute regarding witness tampering, 18 U.S.C. 1512.

There are some who believe that witness tampering can't happen in light of day or by use of social media, that it could only be done outside of public view. I wanted to get your thoughts on that theory.

Ms. VANCE. So, you know, I'm going to confess that it's surprising to see witness tampering happening in plain view and on Twitter. I don't think that that's something that a lot of prosecutors have confronted before this.

But, legally, there is no reason that that public conduct can't be obstruction. And we know, because we've seen it, that it can have that effect.

It is, I will say, very unusual to put the evidence out there for the FBI to collect.

Mr. STANTON. Let me pose a quick hypothetical maybe for Professor McQuade.

If you were investigating the actions of a high-profile individual, maybe someone of immense power, political power, and that targeted publicly praised witnesses who refused to cooperate with the government as having, quote, guts, unquote, could that be evidence of a violation of Federal witness-tampering statutes?

Ms. MCQUADE. Yes, I would say that would be some evidence. I might want more evidence, but it would certainly be a red flag to me that would cause me to want to investigate further.

Mr. STANTON. How about if that same powerful figure publicly suggests that law enforcement agencies under his control should, quote, watch, unquote, members of a cooperating witness' family——

Mr. COLLINS. Mr. Chairman——

Mr. STANTON [continuing]. Could that be——

Mr. COLLINS [continuing]. Point of order.

Chairman NADLER. The gentleman will state his point of order.

Mr. COLLINS. I will just ask that the gentleman rephrase his question. Otherwise, I will continue my point of order. If the gentleman will agree, I will withdraw my point of order.

Mr. STANTON. Well, I was only asking in the hypothetical.

Mr. COLLINS. It doesn't matter. You cannot do that, according to the parliamentary rules of this House.

Chairman NADLER. The gentleman may wish to rephrase his question.

Mr. STANTON. I think the point was made, and I will yield back. Thank you.

Chairman NADLER. The gentleman yields back.

I want to observe, before we close, that several members have said that this committee should not be investigating a bogus allegation against the President but should rather investigate the origins of the bogus investigation.

I would point out that the report from the special prosecutor makes very clear that the Russians attacked our elections, that

they did so intending to help the Trump campaign, that there is substantial evidence that the Trump campaign knew about the Russian attack, that it welcomed the help of the Russian Government, that some Trump campaign officials cooperated with the Russians, that there is—I would observe there is clear evidence of collusion, though not enough evidence to prove criminal conspiracy beyond a reasonable doubt, "collusion" being defined as cooperation.

This is not a bogus investigation of a false allegation but a very necessary investigation of a threat to our country and our liberty. This committee and this Congress have an absolute obligation to the American people to investigate this.

Before we close, I ask unanimous consent to insert into the record a copy of each of the slides referenced at the hearings.

Without objection, they will be entered.

[The information follows:]

CHAIRMAN NADLER FOR THE OFFICIAL RECORD

SPECIAL COUNSEL FINDINGS: "THE PRESIDENT MADE REPEATED ATTEMPTS TO GET MCGAHN TO CHANGE HIS STORY" (VOL. II, P. 120)

JAN. 25, 2018	NYTimes: "**President Trump ordered the firing" of the Special Counsel**, but "backed down after [McGahn] threated to resign."
JAN. 26, 2018	Trump's Counsel Directs McGahn's Counsel: **Deny the story.** (Vol. II, p. 114)
JAN. 26, 2018	McGahn refuses: "[T]he Times story was accurate in reporting that the **President wanted the Special Counsel removed."** (Vol. II, p. 114)
JAN. 26, 2018	Trump Directs Press Secretary: Tell McGahn to **deny the story**; McGahn refused because that account "was accurate." (Vol. II, p. 114-15)
FEB. 5, 2018	Trump Directs Aide: Tell McGahn to create a record denying the story. "If [McGahn] doesn't write a letter, then maybe **I'll have to get rid of him."** (Vol. II, p. 115-116)
FEB. 6, 2018	Trump Summons McGahn to Oval Office: "[D]o a correction," but McGahn refused; when Trump objected, "**McGahn responded that he had to and that his conversations with the President were not protected**." (Vol. II, p. 117)


SPECIAL COUNSEL FINDINGS: "THE PRESIDENT'S EFFORTS TO CURTAIL THE SPECIAL COUNSEL INVESTIGATION" (VOL. II, P. 90)
JUNE 14, 2017
NBC News: "Trump Being Investigated For Possible Obstruction Of Justice."
JUNE 15, 2017
Trump Tweet: "You are witnessing the single greatest WITCH HUNT in American political history - led by some very bad and conflicted people!"
JUNE 17, 2017
Trump Directs McGahn: Fire the Special Counsel, "Mueller has to go . . . call me back when you do it." (Vol. II, p. 86)
JUNE 19, 2017
Trump Dictates to Former Campaign Manager: Deliver a message to the Attorney General directing him not to investigate Trump. (Vol. II, p. 91)
DEC. 6, 2017
Trump Pressures Attorney General: Supervise Special Counsel to protect Trump and "shield the President from the ongoing Russia investigation." (Vol. II, 112-13)

SPECIAL COUNSEL FINDINGS: "SUBSTANTIAL EVIDENCE" (VOL. II, P. 88)

The President **"directed McGahn to have the Special Counsel removed."** (Vol. II, p. 90)

"[T]he President's attempts to remove the Special Counsel were linked . . . to reports that the **President was being investigated** for potential obstruction of justice." (Vol. II, p. 89)

"[T]he President's efforts to have Sessions limit the scope of the Special Counsel's investigation was intended . . . to **prevent further investigative scrutiny of the President**'s and his campaign's conduct." (Vol. II, p. 97)

"[T]he President acted for the purpose of influencing McGahn's account in order to **deflect or prevent further scrutiny of the President**'s conduct towards the investigation." (Vol. II, p. 120)

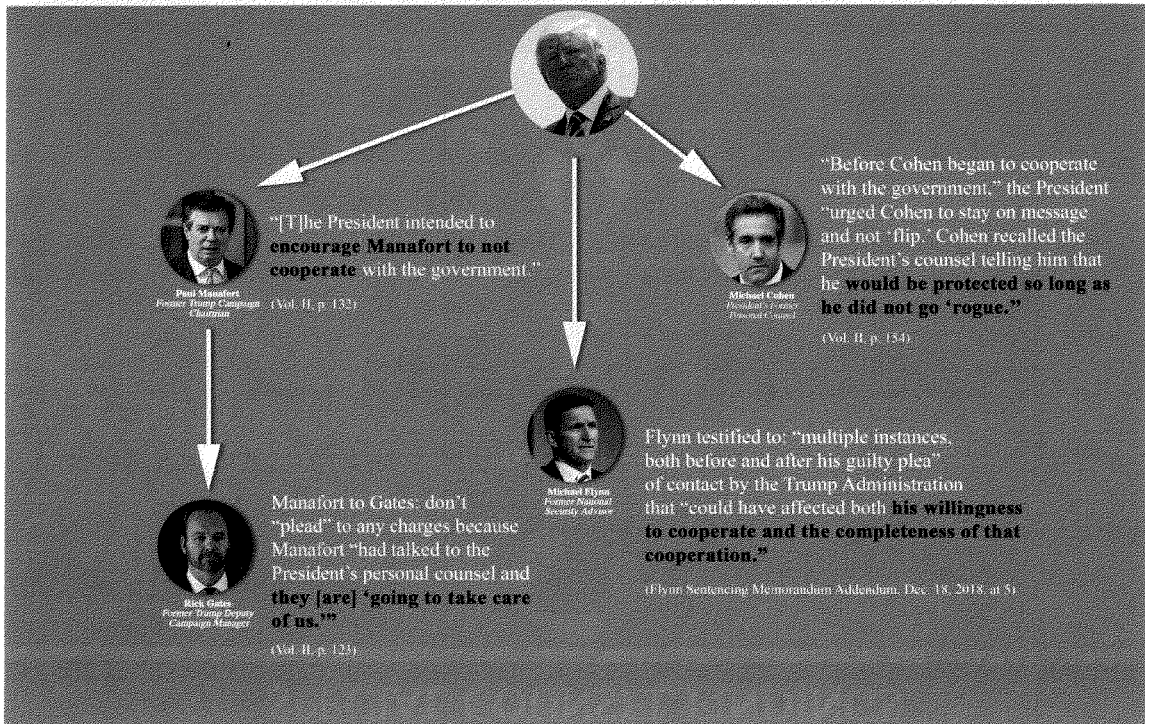
SPECIAL COUNSEL FINDINGS – PRESIDENT TRUMP'S CONDUCT

"[I]f we had confidence after a thorough investigation of the facts that the President clearly did not commit obstruction of justice, we would so state . . . however, **we are unable to reach that judgment.**" (Vol. II, p. 8)

"[W]hile this report does not conclude that the President committed a crime, it also **does not exonerate him.**" (Vol. II, p. 8)

"[E]vidence does indicate that a thorough FBI investigation would uncover facts about the campaign and the President personally that **the President could have understood to be crimes** or that would give rise to personal and political concerns." (Vol. II, p. 76)

SPECIAL COUNSEL FINDINGS – WITNESS CONTACTS



SPECIAL COUNSEL FINDINGS
"Denying Facts"
(Vol. II, 1)
"Efforts to Curtail the Special Counsel Investigation"
(Vol. II, 90)
"Encourag[ing] Witnesses Not to Cooperate"
(Vol. II, 7)

SPECIAL COUNSEL FINDINGS:
PEOPLE WHO REFUSED PRESIDENT TRUMP'S ORDERS
DONALD TRUMP
James Comey
Former
FBI Director
(Vol. II, p. 75)
Donald McGahn
Former
White House Counsel
(Vol. II, p. 4)
Rick Dearborn
Former Senior
White House Official
(Vol. II, p. 53)
Robert Porter
Former White House
Staff Secretary
(Vol. II, p. 108)
Jeff Sessions
Former
Attorney General
(Vol. II, p. 107)
Corey Lewandowski
Former Trump
Campaign Manager
(Vol. II, p. 5)
Reince Priebus
Former White
House Chief of Staff
(Vol. II, p. 96)

SPECIAL COUNSEL FINDINGS

TRUMP:
"This is the end of my Presidency, I'm f**ked." (Vol. II, 78)

TRUMP TO McGAHN:
"Mueller has to go. . . . Call me back when you do it." (Vol. II, 86)

TRUMP TO ATTORNEY GENERAL:
"Limit [Mueller's] jurisdiction [to exclude Trump]." (Vol. II, 91)

The New York Times

NYTIMES:
"President Trump ordered the firing of [the Special Counsel]."

TRUMP TO McGAHN:
"This story doesn't look good. You need to correct this." (Vol. II, p. 116)

Chairman NADLER. I ask further unanimous consent to enter a letter signed by over a thousand Federal prosecutors in both Democratic and Republican administrations stating their views on the Mueller report.

Without objection, that will be entered into the record.

[The information follows:]

CHAIRMAN NADLER FOR THE OFFICIAL RECORD

Protect Democracy

Statement by Former Federal Prosecutors

May 22, 2019

We are former federal prosecutors. We served under both Republican and Democratic administrations at different levels of the federal system: as line attorneys, supervisors, special prosecutors, United States Attorneys, and senior officials at the Department of Justice. The offices in which we served were small, medium, and large; urban, suburban, and rural; and located in all parts of our country.

Each of us believes that the conduct of President Trump described in Special Counsel Robert Mueller's report would, in the case of any other person not covered by the Office of Legal Counsel policy against indicting a sitting President, result in multiple felony charges for obstruction of justice.

The Mueller report describes several acts that satisfy all of the elements for an obstruction charge: conduct that obstructed or attempted to obstruct the truth-finding process, as to which the evidence of corrupt intent and connection to pending proceedings is overwhelming. These include:

- The President's efforts to fire Mueller and to falsify evidence about that effort;
- The President's efforts to limit the scope of Mueller's investigation to exclude his conduct; and
- The President's efforts to prevent witnesses from cooperating with investigators probing him and his campaign.

Attempts to fire Mueller and then create false evidence

Despite being advised by then-White House Counsel Don McGahn that he could face legal jeopardy for doing so, Trump directed McGahn on multiple occasions to fire Mueller or to gin

up false conflicts of interest as a pretext forgetting rid of the Special Counsel. When these acts began to come into public view, Trump made "repeated efforts to have McGahn deny the story" —going so far as to tell McGahn to write a letter "for our files" falsely denying that Trump had directed Mueller's termination.

Firing Mueller would have seriously impeded the investigation of the President and his associates —obstruction in its most literal sense. Directing the creation of false government records in order to prevent or discredit truthful testimony is similarly unlawful. The Special Counsel's report states: "Substantial evidence indicates that in repeatedly urging McGahn to dispute that he was ordered to have the Special Counsel terminated, the President acted for the purpose of influencing McGahn's account in order to deflect or prevent scrutiny of the President's conduct toward the investigation."

Attempts to limit the Mueller investigation

The report describes multiple efforts by the president to curtail the scope of the Special Counsel's investigation.

First, the President repeatedly pressured then-Attorney General Jeff Sessions to reverse his legally-mandated decision to recuse himself from the investigation. The President's stated reason was that he wanted an attorney general who would "protect" him, including from the Special Counsel investigation. He also directed then-White House Chief of Staff Reince Priebus to fire Sessions and Priebus refused.

Second, after McGahn told the President that he could not contact Sessions himself to discuss the investigation, Trump went outside the White House, instructing his former campaign manager, Corey Lewandowski, to carry a demand to Sessions to direct Mueller to confine his investigation to future elections. Lewandowski tried and failed to contact Sessions in private. After a second meeting with Trump, Lewandowski passed Trump's message to senior White House official Rick Dearborn, who Lewandowski thought would be a better messenger because of his prior relationship with Sessions. Dearborn did not pass along Trump's message.

As the report explains, "[s]ubstantial evidence indicates that the President's effort to have Sessions limit the scope of the Special Counsel's investigation to future election interference was intended to prevent further investigative scrutiny of the President's and his campaign's conduct"—in other words, the President employed a private citizen to try to get the Attorney General to limit the scope of an ongoing investigation into the President and his associates.

All of this conduct—trying to control and impede the investigation against the President by leveraging his authority over others—is similar to conduct we have seen charged against other public officials and people in powerful positions.

Witness tampering and intimidation

The Special Counsel's report establishes that the President tried to influence the decisions of both Michael Cohen and Paul Manafort with regard to cooperating with investigators. Some of this tampering and intimidation, including the dangling of pardons, was done in plain sight via tweets and public statements; other such behavior was done via private messages through private attorneys, such as Trump counsel Rudy Giuliani's message to Cohen's lawyer that Cohen should "[s]leep well tonight[], you have friends in high places."

Of course, these aren't the only acts of potential obstruction detailed by the Special Counsel. It would be well within the purview of normal prosecutorial judgment also to charge other acts detailed in the report.

We emphasize that these are not matters of close professional judgment. Of course, there are potential defenses or arguments that could be raised in response to an indictment of the nature we describe here. In our system, every accused person is presumed innocent and it is always the government's burden to prove its case beyond a reasonable doubt. But, to look at these facts and say that a prosecutor could not probably sustain a conviction for obstruction of justice—the standard set out in Principles of Federal Prosecution—runs counter to logic and our experience.

As former federal prosecutors, we recognize that prosecuting obstruction of justice cases is critical because unchecked obstruction—which allows intentional interference with criminal investigations to go unpunished—puts our whole system of justice at risk. We believe strongly that, but for the OLC memo, the overwhelming weight of professional judgment would come down in favor of prosecution for the conduct outlined in the Mueller Report.

If you are a former federal prosecutor and would like to add your name below, click here *(https://docs.google.com/forms/d/1lvGB7iKVcyaMHc768rmgeNP6zbCB_1X0-ruvv5udWOw/edit)*. **Protect Democracy** *(https://protectdemocracy.org/)* **will update this list regularly with new signatories.**

	First name	Last name	Highest DOJ title
451	Jane	Levine	Assistant United States Attorn
452	Sanford	Cohen	Chief, Civil Rights, Eastern Dist
453	William	Craco	Deputy Chief, Criminal Divisio
454	Leslie	Bellas	Trial Attorney
455	Lauren	Resnick	Assistant US Attorney EDNY -
456	Daniel	Goldman	Deputy Chief, Organized Crim
457	Frank	Tuerkheimer	U.S. Attorney; Associate Wate
458	Alex	Whiting	Assistant U.S. Attorney D.Mas
459	Joseph	Salus	Supervisory Attorney Criminal
460	Cynthia	Campbell	Assistant U.S. Attorney WD Mi
461	Mary Ellen	Kris	Chief, Environmental Protectic
462	Samuel	Buell	Assistant United States Attorn
463	Veta	Carney	Senior Trial Attorney & Assista
464	Eugene	Kaplan	Deputy Chief and Senior Litig
465	Paul	Kelly	Assistant U.S. Attorney

1019 records

Signatories have been vetted to the best of our ability.

This is a joint website of United to Protect Democracy and the Protect Democracy Project. Learn More

Chairman NADLER. This concludes today's hearing. I want to thank the witnesses for attending, for their patience, their fortitude, and their fortitude with some of the questions or statements.

Without objection, all members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

[The information follows:]

Chairman NADLER. And, without objection, the hearing is adjourned.

[Whereupon, at 6:24 p.m., the committee was adjourned.]

APPENDIX

SRG Statement
HJC Hearing
Monday, June 10, 2019
191 words

Mr. Chairman, thank you for calling this hearing today. To the witnesses, thank you for coming to testify.

We're here to learn more about the behavior and actions of the President as they relate to obstruction of justice. Specifically—how and to what extent was the President's conduct improper. This is an important question to the committee, and the American people. This hearing will help provide the answers and the clarity the people deserve.

For our system to function effectively, we need transparency and honesty from all elected officials, NOBODY is above the law. This hearing is proof that we are striving to maintain this American standard, and that moving the needle on this issue is simply not an option.

It is important to emphasize what Special

Counsel Mueller stated in his report—and subsequent public statement—that if he had adequate evidence to exonerate the President, he would've done so.

Therefore, it is now Congress's job to examine the evidence, deliberate the facts, apply the law, and determine whether the President's actions are worthy of invoking Article I powers.

The American people deserve justice.

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